# A MANUAL
OF
# INTERNATIONAL LAW

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WITH

## EPITOMES OF LEADING CASES AND CONVENTIONS

*A GUIDE TO THE MODERN PRACTICE OF STATES*

BY

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# FOREWORD.

My principal object in writing this primer of International Law was to cater for the needs of those University students reading the subject for Schools or Finals.

I have attempted to show the *legal* aspect of International Law and with this object in view I have laid much stress on the practice of States as manifested by judicial decisions, arbitral awards and conventions.

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# TABLE OF CONTENTS.

## THE LAW OF PEACE.



## THE LAWS OF WAR.

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## NEUTRALITY.

# TABLE OF CASES.

# THE LAW OF PEACE.

## Definition of International Law.

BRIERLY: "International Law may be defined as the body of rules and principles of action which are binding upon civilised States in their relations with one another."

LAWRENCE: "The rules which determine the conduct of the general body of civilised States in their dealings with each other."

OPPENHEIM: "International Law is the name for the body of customary and conventional rules which are considered legally binding by civilised States in their intercourse with each other."

HALL: "Primarily International Law governs the relations of such of the communities called independent States as voluntarily subject themselves to it."

## Weakness of International Law.

(1) No international Legislature.
(2) Its narrow range—too many matters left with States —*e.g.*, naturalization, tariffs, etc.
(3) Uncertainty.
(4) Excessive nationalism.

Common consent, express or implied, is the true basis of International Law.

International Law comprises the rules observed by *civilised* States, not necessarily those observed by *Christian* States only.

International Law is a law for States, not individuals. There is an increasing tendency to replace unwritten customary law by formal conventions.

Modern International Law dates from the birth of the European State system.

## Sources.

The fundamental sources are custom and treaties. To determine an alleged rule of International Law it must be proved "either to have received the express sanction of international agreement, or it must have grown to be part

[1] *The Paquete Habana* and *The Lola* (1899), 175 U. S. 677. Shortly after the outbreak of the Spanish-American War in 1898, two Spanish fishing vessels were captured off the Cuban coast by U.S. cruisers. Neither vessel was armed nor resisted capture and neither had knowledge of the war. *Held*, that coast fishing vessels, unarmed and non-belligerent, should be exempt from capture as prize of war.

The Court, in the absence of express municipal law, laid down its rule in accordance with the proved actual practice of States and the evidence of accredited writers.

[2] *Walker* v. *Baird*, [1892] A. C. 491. The commander of a ship who had seized certain lobster factories on the Newfoundland coast pleaded the defence of "act of State." The Crown and French Government agreed that no more factories should be established on that coast without the joint permission of the commanders of the British and French naval stations. *Held*, that the Courts were competent to inquire into the act, as there was an invasion of private rights without legislative sanction.

[3] *Buron* v. *Denman* (1848), 2 Ex. 167. A British naval officer seized and liberated certain slaves owned by a foreigner abroad under orders of the Crown. *Held*, that this was an "act of State" for which no action could be maintained.

of International Law by the frequent practical recognition of States in their dealings with each other."

Custom is usage which has become legally obligatory owing to its approval by the common consent of civilised nations.

The approved usage of nations may be evidenced by the works of great publicists, State Papers, and by the decisions of Prize Courts and international tribunals.[1]

The decisions of international Courts have not the binding force of English precedents, though they undoubtedly possess a strong persuasive authority. The other great source of International Law may be conveniently called law-making treaties, which usually establish rules for the determination of future international conduct—*e.g.*, The Hague Conventions of 1899 and 1907; the Declaration of Paris, 1856; and, above all, the Treaty of Versailles, 1919.

Art. 38 of the Statute of the Permanent Court of International Justice has defined the sources of International Law as—

(1) International conventions, whether general or particular, establishing rules expressly recognised by the contesting States.

(2) International custom, as evidence of a general practice as law.

(3) The general principles of law recognised by civilised nations.

(4) Judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of the rules of law.

**International Law and English Law.**

The following principles are well established :—

(a) The rules of International Law will be binding on English Courts if they are sanctioned by immemorial usage or by virtue of agreement.

(b) All law-making treaties ratified by this country are binding on the English Courts. However, treaties which affect private rights must be sanctioned by the Legislature.[2]

(c) Municipal Courts are not competent to inquire into the validity of Acts of State. An Act of State is an act done with the authority of the Crown outside the British territory and affecting aliens.[3]

(d) The rules of International Prize Law are binding upon British Prize Courts unless they are repugnant to an Act of Parliament.

## *CLASSICAL WRITERS ON INTERNATIONAL LAW.*

Modern International Law dates from GROTIUS' "De Jure Belli ac Pacis," 1625.

His most important predecessors were :—

AYALA (1548-84), who wrote "De Jure et Officiis bellicis et Disciplina militari."

GENTILIS (1552—1608), an Italian who was a Professor at Oxford. In 1598 he published "De Jure Belli," which clearly indicated that International Law was an independent branch of the law and not a branch of ethics. He greatly influenced Grotius.

GROTIUS (1583—1645) : "The father of the law of nations"—jurist and politician; he became Swedish Ambassador to France in 1634.

In 1609 he published "Mare Liberum," in which he declared the freedom of the open sea.

His greater work, "De Jure Belli ac Pacis," appeared in 1625, and has had tremendous influence. He wrote it in disgust at the barbarous means of warfare then prevalent.

Grotius takes the view, now universal, that wars are either lawful or unlawful. He recognised the duties induced by inter-State relations and regarded International Law as the Law of Nature supplemented by general consent.

ZOUCHE (1590—1660) Professor at Oxford and Admiralty Judge, published the "Juris et Judicii Fecialis" in 1650. He, like Gentilis, was a forerunner of the Positivists. Unlike Grotius, Zouche stressed the customary nature of the Law of Nations. He also clearly distinguished between the Law of Peace and the Law of War.

The seventeenth and eighteenth centuries witnessed the growth of three distinct schools of thought.

THE NATURALISTS denied the binding force of the Customary Law and declared International Law to be merely part of the Law of Nature.

PUFENDORF (1632-94), Professor of Heidelberg, was a foremost supporter of this view.

THE POSITIVISTS.—This school based the law on custom and express agreement; this is substantially the modern view.

BYNKERSHOEK (1673—1743), a Dutch jurist, was one of this school; his most famous works are : "De Dominio Maris," "De Foro Legatorum," "Quaestionum Juris Publici, libri ii."

THE GROTIANS were the seventeenth- and eighteenth-century disciples of Grotius and took up their stand midway between the other two schools. They recognised the natural and positive bases of the law, but, unlike Grotius, did not subordinate the former to the latter.

VATTEL (1714-69), a Swiss diplomat whose "Le Droit des Gens" enjoyed a great vogue and is still popular in diplomatic circles. He advocated more humane means of warfare.

The nineteenth and early twentieth centuries saw many valuable declaratory authors on International Law, among whom may be mentioned PHILLIMORE, HALL, WESTLAKE, OPPENHEIM, HYDE, BLUNTSCHLI, and KLUBER.

**Codification of International Law.**

Codification has done much to remove lack of precision in International Law. BENTHAM first proposed it.

In 1868, Bluntschli published a well-known draft code.

FIELD in 1872 published "Draft Outlines of an International Code."

In 1873, the Institute of International Law was founded at Ghent and has subsequently codified many topics.

In 1899, above all, The Hague Conference produced two important conventions :—

(a) Convention for the Pacific Settlement of International Disputes.

(b) Convention with respect to the Laws and Customs of War on Land.

The Hague Conference of 1907 codified several portions of maritime law.

In 1924, the Council of the League appointed a Committee of experts to report on the codification of International Law and to select topics ripe for codification.

Several important Conventions may be noted, including Conventions for the Simplification of Customs Formalities, on Traffic in Women and Children, and several International Labour Conventions.

The First Codification Conference was held at The Hague in 1930.

[4] *Luther* v. *Sagor*, [1921] 3 K. B. 532 (C. A.). The plaintiff's timber had been confiscated in 1919 by the Soviet Government and sold to the defendant. Timber claimed by plaintiff.

Roche, J., in the King's Bench Division held that the plaintiff must succeed as the Soviet Government was not recognised by the British Government.

On appeal, Court reversed the judgment as in the interim between the two hearings a trade agreement had been concluded with Russia which afforded *de facto* recognition and was *retrospective* to December, 1917.

# INTERNATIONAL PERSONS.

**The State.**

In International Law the State is a political community occupying a fixed territory, the members of which are subject to some sovereign authority; above all, it is capable of maintaining international relations.

For the purposes of International Law States may be classified as—

(1) *Independent.*
(2) *Dependent.*

The former are fully sovereign members of the family of nations, and capable of controlling their own external relations, *e.g.*, France, the British Empire. The latter have only a limited capacity for foreign relations and are imperfect subjects of International Law, *e.g.*, Egypt.

Dependent States undoubtedly have many of the characteristics of International Persons; *e.g.* :—

(a) They often send and receive diplomatic representatives.
(b) They sometimes conclude treaties.

N.B.—Statehood alone does not imply membership of the family of nations, though the lack of such a qualification will not necessarily place the State outside the sphere of International Law. States are often outside the family of nations owing to their difference of civilisation, which in time of war especially places them beyond ordinary international standards.

**A State becomes an International Person and a subject of International Law through Recognition.**[4]

Diplomats distinguish between recognition *de facto* and *de jure.* The latter is complete recognition; the former involves trade relations without an exchange of diplomatic courtesies.

Recognition may be :—

(1) *Express.*
(2) *Implied.*

Express recognition is given by some formal declaration; implied recognition by concluding a treaty or accrediting diplomatic representatives.

Recognition may take many forms :—

(a) The conclusion of a treaty between the recognising and the recognised State, *e.g.*, between France and U.S.A. in 1778.
(b) Admission to the League of Nations.
(c) Accrediting of diplomatic representatives or consuls.
(d) Admission to an international conference : *e.g.*, Poland's representatives were admitted to the Peace Conference, 1919.

Since recognition is essentially a *political* rather than a legal act, recognition may be made conditional, *e.g.*, at the Berlin Congress of 1878 the Powers recognised the independence of Montenegro, Serbia and Roumania on condition that religious liberty was granted to their subjects.

Recognition by one State does not bind others, though it usually tends to do so in practice.

Recognition of a revolted colony or the insurgents in a civil war may be safely accorded if a proper Government is set up and the international laws of war are not violated. Such recognition is largely a matter of policy.

N.B.—Precipitate recognition will constitute an act of unfriendly Intervention.

[5] *Arbitration between Great Britain and Costa Rica.* (See American Journal of I. L. (1924), p. 147; British Year Book of I. L. (1925), pp. 199—204.) Before Chief Justice W. M. Taft in 1928. In January, 1917, the Costa Rican Government was overthrown by the revolutionary leader Tinoco, who ruled until August, 1919. A subsequent Government passed an Act invalidating contracts between the Tinoco Government and private persons.

(1) Great Britain claimed that the Royal Bank of Canada held bills issued by the Tinoco Government on the Bank of Costa Rica.

(2) *Great Britain, on behalf of a British company,* claimed that a concession to exploit oil in Costa Rica granted by the Tinoco Government should be recognised.

*Held,* that Tinoco's Government was the actual sovereign Government at the time the rights were given and thus the obligations could not be subsequently repudiated. Even though Great Britain, among others, had not recognised the Tinoco Government, she was not estopped from claiming that the Government Acts should be supported.

As to the concession, the arbitrator said it was a matter for Costa Rica and the diplomatic intervention of Great Britain.

# INTERNATIONAL IDENTITY.

**International Identity remains, in principle, unaffected by change in the headship of a State, and in its territory.**[5]

State Identity is affected by :—

(1) Merger of two States, *e.g.*, Korea merged into Japan in 1910.

(2) Union of hitherto Independent States into a Federal State whereby they lose their external sovereignty; or, conversely, when a member-State of a Federal Union abandons the Union and resumes the status of a Sovereign State.

(3) Disintegration of a State; *e.g.*, the break-up of Poland in 1795 and its division by Russia, Austria and Prussia.

[**The Equality of States** (a theory of the Naturalists). —Legally, all States have equal rights and duties. Practically, however, the Great Powers of the world—England, France, Italy, Germany, Russia, U.S.A., and Japan—have a pronounced political hegemony. Thus the Great Powers of Europe have permanent seats on the Council of the League.]

**Dependent States.**

This term may be generally applied to those States which, though possessing internal sovereignty in varying degrees, *lack external sovereignty.* Cuba is nominally an independent State, but it is virtually a protectorate of America, which can construct naval stations and control foreign relations (apart from controlling customs, expenditure, etc.).

The term "suzerainty" may be rejected and it has almost disappeared from international usage.

**Protectorates.**

These are States which are under the protection of some other Power which exercises a varying measure of control over their external relations, and sometimes over their internal affairs.

[6] *The Ionian Ships* (1855), 2 Spinks 212. During the Crimean War, certain ships owned by Ionians were brought in for adjudication by British ships on the ground that they were trading with the enemy. By the Treaty of Paris, 1815, the islands were declared an independent State under the protectorate of Great Britain. *Held*, by Dr. Lushington, that according to the terms of the treaty the Ionians were not *subjects* of the protecting Power, and that though the latter possessed the power to declare war and make treaties on behalf of the protected State, the latter would not be involved *ipso facto*.

[7] B. Y. I. L. (1924), p. 89.

Oppenheim calls the relationship "a kind of international guardianship." The protected State is an International Person and never merely a portion of the protecting State. Protectorates vary according to the arrangement between them and the superior Power.

A declaration of war by the superior State will not involve the protected State.[6] Nor will treaties *ipso facto* bind the protected State.

In Europe, the Republic of Andorra is a good example of a protectorate—it is under the joint protectorate of France and Spain.

**The Free City of Danzig.**[7]—Its constitution is guaranteed by the League. Poland under a treaty of 1920 controls the foreign relations of Danzig; in the case of disputes there is a final right of appeal to the Council of the League.

Certain other States present an anomalous status and they may be considered individually.

**Egypt.**

Egypt remained a vassal State of Turkey until 1914, when war broke out between Great Britain and Turkey, and the former formally declared a protectorate over Egypt.

In 1922 Great Britain declared Egypt an independent sovereign State but temporarily reserved to her own discretion :—

(1) The security of British communications.
(2) The defence of Egypt against all foreign interference, direct or indirect.
(3) The protection of foreign interests and minorities in Egypt.
(4) The Soudan.

Egypt has definitely not assented to this reservation and its position is anomalous.

**Switzerland.**

Switzerland was permanently neutralised by the Congress of Vienna, 1815. She was admitted as an original Member by the Council of the League of Nations on condition that she was not to be forced to participate in a war.

Its independence and integrity are guaranteed but it is under an obligation not to make war except in self-defence and not to conclude treaties of alliance and guarantee. In this sense it cannot be regarded as sovereign, notwithstanding that it is a State with royal honours.

[8] The Imperial Conference of 1926 presided over by Lord Balfour thus defines the self-governing Dominions: "They are autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations."

**The British Dominions.**[s]

These present another anomalous international status. They have not the right of declaring peace and war but they have acquired a separate international status.

Thus, Canada and the Irish Free State send diplomatic representatives to Washington. All the Dominions, except Newfoundland, are Members of the League and separately signed the Peace Treaties. In 1923, Canada directly and independently signed the Halibut Fisheries Treaty with the United States.

Australia, New Zealand, and South Africa hold mandates from the League.

The self-governing Dominions undoubtedly occupy a place in the family of nations.

**Mandates.**

By Art. 22 of the Covenant of the League of Nations certain territories surrendered by Germany and Turkey to the Allies are placed under the guardianship of the League. These are usually backward nations administered by certain Members of the League on behalf of it—"a sacred trust of civilisation."

A mandate is *not* a form of annexation; a mandatory is governed by the terms of the mandate, and no annexation or cession may be effected without the consent of the Council of the League. Each mandate contains a clause that no mandate can be modified without the consent of the Council of the League.

The following are the types of mandate :—

**A.**—These communities have reached a fairly advanced stage of development and the mandatory merely offers administrative advice and assistance; in Palestine, however, Great Britain appoints the local Government.

Examples of this type are :—

Iraq—Great Britain.
Palestine and Transjordania—Great Britain.
Syria and Lebanon—France.

Iraq was made a Member of the League at the 1932 Assembly and can no longer be termed a mandated area. (*Vide* League of Nations Official Journal, January 1933, pp. 152—154).

**B** and **C** apply to less advanced communities. In Class **B** the mandatory actually administers the territory though pledged to prohibit such abuses as the slave, arms, and liquor traffics, and the military training of natives. Equal opportunities for trade and commerce are offered to all Members of the League.

[9] *R.* v. *Jacobus Christian* (B. Y. I. L., 1925, p. 211). An inhabitant of South-West Africa was convicted of high treason and appealed. It was shown that he had during the existence of a rebellion in the mandated territory engaged in hostilities against the King's forces. *Held*, on appeal, that, though a member of a mandated territory, he was rightly convicted of high treason, since the mandatory was *de facto* and *de jure* the government of the territory, and had the sole power of legislation, and *was not subject to the* majestas *of another State.*

[10] *The Mavromattis Concession* (1925), P. C. I. J., Series A, No. 2.

This class comprises the Central African territories which are thus divided :—

British Cameroons—Great Britain.
French Cameroons—France.
British Togoland—Great Britain.
French Togoland—France.
Tanganyika—Great Britain.

C.—Territories such as S.W. Africa and certain South Pacific Islands which, on account of "the sparseness of their population, or their small size . . . and other circumstances, can be best administered as integral portions" of the territory of the Mandatory subject to the safeguards above mentioned.

There is no "open door policy." Examples are :—

South West Africa—Union of South Africa.
Samoa—New Zealand.
Pacific Islands, north of the Equator—Japan.

**Nationality of Inhabitants of Mandated Areas.**[9]

The inhabitants do not *ipso facto* assume the nationality of the mandatory.

The "A" mandates are now invested with a new nationality.

The "B" and "C" mandates may subsequently assume the nationality of the mandatory by naturalization.

In the case of South-West Africa the mandatory has offered collective naturalization to all persons of German origin, acceptance being quite voluntary.

The mandate system is supervised by the League through the Permanent Mandates Commission, the majority of the Members being nationals from the non-mandatory States. The mandatory reports annually to the League.

All the mandates contain a provision that any dispute between a Member of the League and a mandatory which does not admit of normal settlement shall be submitted to the Permanent Court of International Justice.[10]

**The Holy See.**

The position of the Pope depends on the Italian Law of Guarantee, which accords him all the honours of a sovereign. He has the right to send and receive envoys. No Italian official may enter the Vatican without the authority of the Holy See.

The Holy See is not a true State. Though it sends and receives envoys, the Holy See cannot conclude international treaties.

[11] *U.S.A.* v. *McRae* (1869), L. R. 8 Eq. 69. The plaintiff sued for an account for money received by the defendant, a Confederate agent, who was domiciled in England. Defendant claimed a right of set-off. The plaintiff refused liability for the acts of the Confederate Government and declined to have an account taken as it would have been between the Confederate Government and defendant. The suit was dismissed as it was held that the parent State succeeded to all the public and proprietary rights of the rebel Government subject to any obligations incident thereto.

[*N.B.*—The Mixed Commission set up by the Treaty of Washington, 1871, freed the United States from liability for the debts of the Confederacy.]

# STATE SUCCESSION.

The question whether the replacement of one International Person by another involves a succession to the rights and duties does not admit of settled rules as the practice has not been uniform. International practice and decided cases afford some illumination on the present state of the law.

The distinction between "partial" and "universal" succession seems artificial and confusing.

## Succession to Rights.

Where one State *de facto* succeeds to another, it succeeds to all the public and proprietary rights of the extinct State. State property and fiscal funds pass to the succeeding State.

When a State succeeds a rebel Government and claims to succeed to the rights of the latter as against a foreigner abroad, the right of succession is subject to any lawful claims which would have availed against the displaced power.[11]

Succession to the rights of the extinct State exists with respect to such local matters as rivers, roads and railways, and rights and duties under treaties with regard to such matters devolve upon the succeeding State.

The succeeding State has a right to the allegiance of those who were formerly subjects of the extinct State and remain on its territory.

The peaceful merger of States, as by cession, often involves an arrangement as to succession to rights and duties. Failing this, the practice has varied.

## Contracts.

(1) *Local Contracts.*—The new State becomes liable for all local debts and contractual obligations such as debts charged on local revenues or on property.

Local concessions and guarantees will bind the succeeding State almost invariably.

Contracts purely personal to the extinct State do not survive it.

[12] B. Y. I. L. (1924), pp. 168—178.

[13] (1) *Robert E. Brown Claim*, American and British Claims Arbitration Tribunal, November, 1923. [B. Y. I. L. (1924), pp. 210—221.] Brown, an American citizen, had substantial mining rights in South Africa of which he was improperly deprived. It was conceded that the Government of the South African Republic had been responsible for a denial of justice. After the annexation by Great Britain, U.S.A., on behalf of Brown, submitted the claim to arbitration. *Held*, that the liability for the tort did not pass to the British Government.

(2) *West Rand Central Gold Mining Co.* v. *R.*, [1905] 2 K. B. 301. *Petition of Right.*—Prior to the outbreak of the Boer War the South African Government illegally appropriated some gold, the property of the suppliants; the latter now sought to recover the gold from the Crown which had succeeded the Republic. *Held*, they could not recover: obligation was merely discretionary for the conqueror.

(3) *Orcesi* v. *Ministry of War* (decided by the Court of Cassation in Florence in 1881). Horses were supplied by plaintiff to the Ministry of War, and used for military purposes. The Government of Parma admitted the claim for compensation and assessed damages. This was repudiated by the succeeding Italian Government. *Held*, that the Italian Government were liable. [Cf. *Kerlengo* v. *The Treasury*, B. Y. I. L. (1924), p. 175.]

**Public Obligations.**

There is no general rule for the assumption of general debts by the succeeding State. The better opinion seems to be that succession is purely a matter of discretion, and the practice has varied considerably. There is no *legal* obligation.

In 1839, Belgium assumed part of the Dutch debt. In 1878, Serbia, Bulgaria and Montenegro succeeded to part of the Turkish debt. Italy assumed from Austria the debt of Lombardy in 1860.

In 1898, U.S.A. forbade Cuba to accept liability for the debts incurred by Spain before the war.

Arts. 46—57 of the Treaty of Lausanne, 1923, between Turkey and the Allies provided that the Ottoman public debt be divided between the various succeeding States.

**State Succession for Torts.**[12]

There is ample authority for the view that succeeding States are under no liability for the delicts of the extinct States.[13]

If, however, the latter had admitted its liability and agreed to give compensation, the debt usually survives to the succeeding State.[13]

**State Succession and Treaty Rights.**

The general principle is that its treaties do not survive the extinction of a State, though the succeeding State may decide to support them. This is definitely the case with all personal or political treaties such as treaties of alliance or of neutrality. It seems that the same rule applies to commerce, extradition, etc. Thus on the annexation of Madagascar by France in 1896, she repudiated all the commercial treaties of Madagascar and imposed her own tariffs.

The general view is that treaties *locally* connected with the territory absorbed will survive the extinction of a State.

[14] The Treaty of Berlin, 1878, only recognised Bulgaria, Montenegro, Serbia and Roumania on condition that they granted religious liberty to all their subjects.

# THE STATE AS AN INTERNATIONAL PERSON.

The State as an International Person must possess :—

(1) External and Internal Independence.

(2) Territorial Supremacy.

The violation of these rights by another State itself or through its agents and subjects will constitute an international delinquency unless :—

(1) It is prompted by self-preservation.

(2) There is a rightful cause of intervention.

A good example of such violation is the sending of troops or warships through foreign territory without permission.

The liberty of States may be subject to limitations without involving the loss of their independence.

(1) Treaties and convention may restrict the liberty of action of a State with respect to other States and even with regard to its own citizens.[14]

It is, of course, a question of fact whether the degree of restriction involves the complete loss of independence.

The Treaty of Havana, 1903, between U.S.A. and Cuba contained a provision that Cuba should not enter into any treaty with a foreign Power which would tend to impair her independence. This would seem to relegate her to the status of a dependent State.

(2) Customary law by its very reciprocity imposes limitations on the independence of States.

Navigation on the great international rivers of Europe is open to the merchantmen of all States.

States are under an obligation not to treat the nationals of other States arbitrarily.

(3) International public opinion definitely limits the complete liberty of action of States.

[15] *The Case of the Caroline* (1843), Pitt Cobbett's L. C., p. 162, 5th edition. During the Canadian rebellion of 1837, the steamer *Caroline* had been used by the insurgents to send arms and men across the Niagara from America. The American Government had made no effort to suppress an impending expedition. Some British troops crossed the river, seized the *Caroline* and sent it adrift. U.S.A. complained of the violation of its territory. The British Government justified itself on the grounds that it was self-defence against an imminent danger and that there was no time for deliberation. U.S.A. accepted the explanation and apology.

[16] *The Case of the Virginius* (1873), Pitt Cobbett's L. C., p. 165, 5th edition. The steamer *Virginius*, registered in America and flying an American flag, had on board arms and several alleged leaders of the insurrection and proceeded towards the coast of Cuba. She was captured by a Spanish warship and searched on the grounds of piracy—several prisoners, including American and British citizens, were executed. During the controversy it was determined that—

(1) Even though the expedition was unlawful, the prisoners—especially those who owed no allegiance to Spain—should have been given a fair trial.

(2) A State has a right to arrest and search on the high seas a vessel flying a foreign flag if there is grave cause for suspicion, and the danger is imminent.

# INTERVENTION.

Intervention is the dictatorial or imperative violation by one State of the independence of another. It must therefore be distinguished from such peaceful acts of interference as Good Offices, Intercession, Mediation, and Arbitration.

Intervention is *ab initio* only legitimate in certain cases. It is, like war, largely a matter of policy rather than of law, and the practice of States has been far from uniform.

**Justifications for Intervention.**

(1) *Self-protection.*

There are many instances of intervention on the grounds of necessity and self-defence. A good example is the case of *The Caroline*,[15] in 1837.

The case of *The Virginius*[16] illustrates the right of a State to protect itself when danger is threatened from the high seas.

A good instance of self-protection is offered by the shelling of Copenhagen and the seizure of the Danish fleet in 1807, although the justification in this case is much disputed. Denmark and France had secretly agreed that, in certain circumstances, the Danish fleet should be used against the British. The latter offered to safeguard the territorial integrity of Denmark if she temporarily gave up her fleet to Great Britain. Denmark refused.

(2) *Enforcement of Treaty Rights.*

A State is justified in intervening if its treaty rights are violated or threatened.

*E.g.*, Great Britain invoked the treaties of London, 1831 and 1839, which guaranteed the integrity and neutrality of Belgium, as her justification in declaring war on Germany. In 1906, America invoked Art. 3 of the Treaty of Havana, 1903, for her intervention in Cuba. The treaty provides that "the Government of Cuba consents that the United States may exercise the right to intervene for the preservation of Cuban independence, the maintenance of a Government adequate for the protection of life, property, and individual liberty."

[17] B. Y. I. L. (1925), pp. 159—171.

[18] *Robert E. Brown Claim* (1924), B. Y. I. L., p. 210.

[19] B. Y. I. L. (1925), p. 164. The Rev. J. King, an American citizen, was banished for offences against the religion of the State. His land was appropriated for public purposes without compensation. U.S. Government intervened and secured an equitable compensation.

(3) *Preservation of fundamental rules and customs of International Law.*

*All States* have a right to intervene in these circumstances to enforce the submission of the delinquent State.

Thus the Powers united against China in 1900 in consequence of the assassination of the German Minister at Peking and other attacks on diplomatic representatives.

(4) *Preservation of the balance of power and the peace of the world.*

Intervention is justified in the interest of the balance of power. The Powers collectively intervened in 1886 in order to prevent war between Greece and Turkey.

Art. XI of the Covenant of the League of Nations provides that :—

"... The League shall take any action that may be deemed wise and effectual to safeguard the peace of Nations."

(5) *Protection of the persons, property, and interests of its nationals abroad—*

may justify intervention and sometimes war.[17]

The commonest causes will be :—

(a) Gross injustice.[18]

(b) Injury caused by unfair discrimination; a good example is provided by the case of the Rev. King in 1858.[19]

In connection with this subject, *The Drago Doctrine* should be noted. The Foreign Secretary of the Argentine, M. Drago, in 1902, when Venezuela was being pacifically blockaded by Great Britain and Germany, on behalf of their nationals, enunciated this view : that a State should not have recourse to armed force for the recovery of contract debts claimed from the Government of a foreign country by its nationals.

This view was incorporated in The Hague Convention (No. II), 1907. Armed intervention in such cases was, however, to apply when the debtor either refused arbitration or failed to submit to the award.

**The Monroe Doctrine.**

This was an expression of opinion by President Monroe in 1823, and it is a matter of the greatest *political* importance though definitely not a rule of International Law.

It established a fundamental principle of American policy.

"The Monroe doctrine is a declaration that there must

[20] President T. Roosevelt in 1901.

[21] Thus U.S.A. intervened in a boundary dispute between Great Britain and Venezuela in 1896.

[22] U.S.A. did not intervene when Great Britain, Germany and Italy in 1902 adopted joint measures of reprisal against Venezuela in order to enforce a settlement of the various claims by their nationals. (Pitt Cobbett's L. C., vol. 1, p. 354, 5th edition.)

be no territorial aggrandisement by any non-American Power on American soil."[20] The doctrine also implies the non-intervention by the United States in European politics.

It asserts a claim of political hegemony by U.S.A. over the whole American continent, and originated as a warning to the policy of intervention pursued consistently by the Holy Alliance subsequent to Waterloo.

The doctrine has been extended as a matter of policy, and is now tantamount to a right of American intervention in any dispute between an American and a non-American State.[21] There have been exceptions, however.[22]

[23] *Macleod* v. *Att.-Gen. for New South Wales*, [1891] App. Cas. 455. Appellant had married in New South Wales and married again during the lifetime of his first wife in America. He was indicted for bigamy under the statute law of New South Wales which provided that "Whosoever, being married, marries another person during the life of the former husband or wife, wheresoever such second marriage takes place, shall be liable to penal servitude for ten years." The Privy Council held that the statute must be construed so as to give the State jurisdiction over crime committed only in its territory. Any other construction would be *ultra vires* the powers of the colony whose jurisdiction was purely local. The conviction for bigamy was quashed. The Statute of Westminster, 1931, s. 8, however, enacts "that the Parliament of a Dominion has full power to make laws having extra-territorial operation."

[24] The provisions of the British law are found in the British Nationality and Status of Aliens Act, 1914, as amended by the British Nationality and Status of Aliens Act, 1918.

[25] *The Parlement Belge* (1880), L. R. 5 P. D. 197. The English owners of a ship which had collided in Dover Harbour with a Belgian mail ship, owned by the King of the Belgians, sought to recover damages. *Held*, the Court would not exercise jurisdiction over the person or public property of a foreign Sovereign, and that it could not inquire into the declaration of the foreign Sovereign as to the nature of the ship.

[26] *Wilderhus Case* (1886), 120 U. S. 1. A Belgian sailor on a Belgian ship docked in New Jersey, U.S.A., killed another member of the crew. U.S. and Belgium had made a convention in 1880 that local authorities should only assume jurisdiction over facts done on Belgian vessels when the disorder was such as to

# THE JURISDICTION OF STATES.

Generally speaking, jurisdiction and territory coincide,[23] and all persons and things within the territory fall under its territorial supremacy. This rule is subject to important qualifications and limitations, as will appear.

The subject may be conveniently treated thus :—

(1) *Territorial Jurisdiction.*
(2) *Extension of a State's Territorial Jurisdiction.*
(3) *Limitations on Territorial Jurisdiction.*

## (1) Territorial Jurisdiction.

Jurisdiction and law are primarily territorial. Thus, with the exceptions to be noted *infra*, the jurisdiction and laws of a State extend to :—

(a) All persons within its territory — natural-born subjects, naturalized subjects,[24] domiciled aliens.
(b) *All things situated within its territory—i.e.*, all property is under the control of the State in which it is situated. This includes jurisdiction over its own ships in its territorial waters and ports and over all acts committed on them.

*Public ships* in foreign ports are exempt from the local jurisdiction[25] (though subject to local regulations of the port).

*Private ships* in foreign ports are generally subject to the local law and jurisdiction. In practice the territorial State will not intervene in matters connected with the internal discipline of the ship : this practice is often regulated by consular treaties.

The practice varies widely with respect to criminal jurisdiction.

Great Britain and U.S.A. claim to exercise criminal jurisdiction over foreign private vessels in their ports.[26] France and many other States, in the absence of consular conventions, disclaim jurisdiction over crimes on foreign vessels in their ports, unless the peace of the port is threatened or strangers are affected.

disturb the tranquillity of the port. Belgian consul applied for *habeas corpus* for *Wilderhus*. *Held*, that U.S. had jurisdiction.

[27] *R.* v. *Keyn* (1876), L. R. 2 Ex. D. 63. The German commander of a vessel was indicted for manslaughter, it being alleged that his negligence had caused a collision (two miles from Dover) in which a passenger on a British ship had lost her life. It was decided that the English Admiralty Court had no jurisdiction to try the case.

[28] *Earl Russell's Case*, [1901] A. C. 446. Earl Russell, a British peer, married in England and married again in Nevada during the lifetime of his first wife, after having obtained an order of divorce from the Courts of Nevada. He was indicted for bigamy and convicted. It was decided that the imperial jurisdiction was independent of place and depended on the national character of the person over whom it was exercised.

[29] Complete List, Stephen, Digest of Criminal Procedure, p. 8.

[30] *Cutting's Case* (Pitt Cobbett's L. C., vol. 1, p. 221). In 1886, an American citizen, Cutting, was arrested in Mexico for an alleged libel, published in Texas, on a Mexican citizen. He was arrested and imprisoned under the Mexican Penal Code which purported to give the Courts jurisdiction over offences committed by foreigners abroad against Mexican citizens. America intervened on the grounds—

(1) That there was no jurisdiction.

(2) That justice was denied the prisoner and that his judicial treatment was not in accordance with prevalent custom in civilised countries.

Cutting was released as the prosecutor withdrew his case. Mexico, however, did not alter the criminal law.

[31] *The Lotus* (1927), P. C. I. J. Series A, No. 10. A

**Territorial Waters.**

These form part of the territory of States subject to a right of "innocent passage" by the ships of other States. The littoral Power does not assume jurisdiction except where its revenue, fishery or sanitation rights are affected.[27]

There is no common practice as to further jurisdiction.

The British practice has received statutory recognition in the Territorial Waters Jurisdiction Act, 1878, which enacts that an offence committed on a foreign ship within territorial waters shall be within the Admiral's jurisdiction, though a foreigner may only be prosecuted in the United Kingdom by certified leave of a Secretary of State.

**(2) Extension of a State's Territorial Jurisdiction.**

A State may exercise jurisdiction—

(a) *Over its subjects abroad* in certain cases, which are usually regulated by statute. The most important instances in English law are treason, murder or manslaughter[28] committed abroad, bigamy, and offences within the Foreign Enlistment Act, 1870.[29]

(b) *Over aliens committing offences abroad.*

Many States claim jurisdiction over the acts of foreigners committed abroad who subsequently enter their territory. Jurisdiction is usually claimed by a State in respect of acts committed by foreigners abroad which endanger its security or credit or which are directed against its nationals.

There has been a great diversity of practice, and a reconsideration of the whole matter is imperative.

A State is undoubtedly justified in intervening when it considers that the extra-territorial jurisdiction claimed by another State is a violation of its own exclusive sovereignty over all persons and things within its own territory.[30]

Jurisdiction has been claimed also in certain cases when an act is committed in one place and the effects are experienced in another.[31]

There is much diversity of opinion on this subject, and the *locus classicus*, the *Lotus Case*, contains too many dissenting judgments for it to be entirely satisfactory.

(c) *Over its ships on the high seas.*

*Ab initio* no State can exercise its jurisdiction over the open sea, but it is a rule of International Law that every

collision occurred on the open sea between a French ship, the *Lotus*, and a Turkish ship, the *Boz Kourt*; the latter sank, with loss of life. The *Lotus* proceeded to Constantinople where the officers of both ships were indicted and convicted of manslaughter.

The French Government made diplomatic representations for the release of the French officer and claimed exclusive jurisdiction over acts committed on its ships on the high seas. The Turkish Penal Code had provided for jurisdiction over foreigners who committed acts against Turkey or Turkish subjects.

The matter was submitted to the International Court and a majority decided that in this case the Turkish Courts had jurisdiction, since the *effects* of the act were felt on the Turkish ship though the act itself was committed on the French vessel.

Unfortunately, the Court gave no opinion on the international validity of the provision of the Turkish Penal Code.

[32] *The Case of the Costa Rica Packet* (Pitt Cobbett's L. C., vol. 1, p. 278). A British ship seized the contents of a derelict Dutch vessel outside the Dutch Indies territorial waters. The English captain was arrested and imprisoned by the Dutch authorities for alleged misappropriation, but released subsequently. Great Britain on his behalf claimed indemnity.

The arbitrator declared for Great Britain and decided that merchant vessels on the high seas are amenable only to their respective national authorities for acts committed on the high seas.

[33] *E.g.*, the British-American Liquor Agreement, 1924.

[34] *E.g.*, Copyright Act, 1842.

State possesses jurisdiction over all ships flying its flag on the high seas and over all persons and things on board.[32]

(d) *Over foreign ships on the high seas.*

*Piracy* is an offence *jure gentium* and the vessel is liable to seizure and punishment at the hands of any State. International piracy consists of an act of violence committed on the high seas without lawful authority.

Piracy as extended by the municipal law is only justiciable in the municipal Courts. Thus the slave trade is piracy according to English law but not International Law.

A vessel wrongfully flying the flag of another State may be seized and confiscated in the Courts of the latter.

Public armed vessels may approach and search other vessels if there is reasonable suspicion of piracy, or if another vessel is reasonably suspected of being engaged in some activities against the safety of the State to which the public vessel belongs. This right is often accorded by treaty.[33]

Where a foreign vessel has committed an offence in territorial waters it may be pursued immediately on to the high seas—this must, however, be done *immediately* and *continuously* and is known as the right of "hot pursuit."

Maritime States may exercise jurisdiction over cases of collision at sea irrespective of the nationality of the ships involved.

In time of war, belligerent warships may search and capture on the high seas all neutral vessels which carry contraband or engage in unneutral service.

(e) *Over certain property outside the jurisdiction.*

This jurisdiction is usually exercised in accordance with certain statutes: in this manner rights have been conferred on foreigners outside the jurisdiction.[34]

**(3) Limitations on Territorial Jurisdiction.**

(a) *Certain persons* within the territory by the common usage of nations are exempt from the local jurisdiction; such as diplomatic representatives of foreign States and foreign Sovereigns and their suites.

(b) A State is entitled to intervene in several cases where its nationals have suffered wrongs at the hands of another State. This protection is purely discretionary, *e.g.*, if its nationals resident in another State suffer treatment which does not comply with the standards of a normal civilised

[35] *McLeod's Case* (Pitt Cobbett's L. C., vol. 1, p. 79). This arose out of the *Caroline* incident (see p. 28). McLeod was a Colonial officer who was indicted for the killing of an American citizen during the capture of the *Caroline*. The British Minister demanded his release, and he was subsequently acquitted.

This case showed that an act of State cannot be questioned by the municipal Courts of another State. Also that military forces of one State are exempt from civil jurisdiction of the territorial State for acts done in the legitimate exercise of belligerent powers.

Further, that they were exempt from local jurisdiction for acts done even in time of peace, against the subjects of a normally friendly Power, under the authority of the home State.

community; if they are denied justice or not given reasonable protection.

In the case of subjects of Western States resident in Oriental and African countries, where the standards are different from or inferior to the Western countries, many special conventions have been made exempting them wholly from territorial jurisdiction. Such subjects are usually placed under the jurisdiction of the Consular Courts.

(c) Foreign *armed forces*.

The generally accepted view is that armed *land* forces on foreign territory and in the service of their home State, although subject to the laws of war, are exempt from the jurisdiction of the foreign State.[35]

**Sea Forces.**

*Men-of-war* in foreign waters with all persons and goods on board are exempt from the jurisdiction of the littoral State. Crimes committed on board remain within the exclusive jurisdiction of the commander and the home State.

It seems that this exemption from local jurisdiction even extends to crimes committed ashore, though the matter rests largely on diplomatic courtesy, and policy. Men-of-war must, however, comply with the local sanitation and excise laws of the littoral State.

[36] Encyclopaedia Brit., vol. 9, p. 2.

[37] *United States* v. *Rauscher* (1886), 119 U. S. 407. A sailor was surrendered by Great Britain to U.S.A. on a charge of murder, but was subsequently indicted and convicted in U.S.A. of assault. *Held*, the conviction must be quashed since, unless otherwise provided for by treaty, the prisoner may only be charged with the offence for which he was extradited unless he was given reasonable time to return to the country which surrendered him.

[38] *Re Castioni*, [1891] 1 Q. B. D. 149. Castioni, a Swiss subject, had taken part in a political disturbance in Switzerland in the course of which he killed a municipal councillor. The Court held that the offence was a political one and refused to order his extradition to Switzerland.

# EXTRADITION.

Extradition is the surrender by one State to another of a person who is accused of, or convicted for, crime committed in one State and who is found within the territory of the other.

It must be noted that there is no *legal* obligation to surrender, in the absence of treaty stipulations. Most States have concluded extradition treaties,[36] but it may be noted that even in the absence of treaties, criminals have been surrendered through diplomatic requisition in the interests of comity.

There is a divergence of practice as to the extradition by a State of its own subjects.

Great Britain has occasionally surrendered her own subjects for crimes committed abroad. France and the continental countries generally do not extradite their nationals but punish them locally for crimes committed abroad.

International practice and convention have established the following rules :—

(1) Where a person has been surrendered for one offence he may not be tried for another.[37]

(2) A person may be extradited only for an offence which is a crime both according to the law of the State which demands his extradition and that which extradites him.

(3) Extradition shall not be applied to purely political offences.[38]

The significance of the term "political" has occasioned much controversy and the matter is still disputed.

N.B.—The demand for extradition must accord with the terms of the specific treaty between the States which contains a list of crimes to which extradition will apply. Many treaties exempt from extradition military deserters and offenders against religion.

Since 1870 Great Britain has concluded extradition treaties with most States and she passed important extradition Acts in 1873, 1895 and 1906.

Under the English law, the prisoner may apply for a writ of *habeas corpus* within fifteen days of the investigation of the magistrate at Bow Street. After this the foreign offender is surrendered under a warrant from the Home Secretary.

# THE TERRITORY OF STATES.

State Territory may be defined as that portion of the earth's surface over which a State exercises supreme and exclusive sovereignty. The territory of a State comprises :—

(a) The land within its ascertained boundaries.
(b) Its internal waters—lakes, canals, rivers, ports, and harbours.
(c) Its territorial waters—certain waters contained in a maritime belt immediately adjacent to the State territory, and the limits of which vary. This belt includes part of the sea, and certain gulfs and straits.
(d) The air-space above its territorial land and water, subject to limitations (*infra*).

This claim to the complete and exclusive sovereignty over the territorial air-space has received recognition in the Aerial Navigation Convention, 1919, signed by the Five Principal Allied Powers and twenty-two other Powers and subsequently ratified by many States.

## *MODES OF ACQUIRING TERRITORY.*

### (1) Occupation.

This is the appropriation by one State of territory not belonging to any civilised State. It is essentially an act of State, done by the authority of the occupying State or subsequently ratified by it.

Two elements are necessary for effective occupation :—

(1) *Appropriation*—some formal act which manifests the intention of the occupying State to retain the territory. This usually takes the form of reading a proclamation and hoisting a flag.
(2) *Settlement*—the original formal act must be followed by settlement or the establishment of some form of control over the occupied area.

The first element alone confers an " inchoate title " on the occupying State : *i.e.*, for a reasonable time after discovery the claims of other States will be excluded and the occupying State will be given the option of effectively settling the territory.

As Hall says : " An inchoate title acts as a temporary bar to occupation by another State."

[39] B. Y. I. L. (1926), p. 41.
Sir J. F. Williams says : " Conquest is often, though not always, a moral wrong. But it is not illegal and it produces legal results."
Many writers deny that legally a title can arise by conquest.
Art. 10 of the Covenant of the League condemns territorial acquisition by means of conquest.

*Limits of Occupied Territory.*

Much depends on the particular circumstances of the case. The general rule may be stated thus: the area of occupation depends on the limits of effective control and the establishment of sovereignty.

The area to which an act of occupation extends will usually be finally regulated by convention or arbitration and will depend on the character of the country, its inhabitants, and the requirements of security.

N.B.—If occupied territory is truly abandoned and not revived by local acts showing a continual claim, it will again become open to occupation by other States.

(2) **Prescription.**

A State may sometimes acquire a valid title to territory through long-continued, undisturbed possession, without having an original proprietary right.

There are no general rules as to length of possession, though it was agreed by a treaty between Great Britain and Venezuela in 1897 that an adverse holding for fifty years should confer a title.

(3) **Accretion.**

This is the addition of new land to existing territory by the action of water. Alluvium is deposited by the waters and then new islands are formed.

(4) **Cession** is the transfer of territory by one State to another. It often ensues on the conclusion of a war and is provided for by the peace treaty. It may, however, arise from voluntary arrangement, such as sale, gift or exchange.

(5) **Conquest.**[39]

This is the acquisition of the territory of an enemy by military force.

A legal title by conquest arises:—

(a) When the territory is completely occupied and controlled by the military conqueror.

(b) When the conquering State shows by declaration an intention to retain the territory.

N.B.—No title by conquest arises unless the conquest has been *completed.*

When a military force occupies a State's territory ("military conquest") and this act is confirmed by a treaty of peace at the conclusion of the war, the title to the territory legally arises from *cession* and not conquest.

# MINOR TERRITORIAL RIGHTS.

It is now necessary to discuss minor territorial rights which fall short of ownership. In this connection we have discussed protectorates and mandates. It may be noted that the acquisition of such rights often leads eventually to actual occupation.

**Leases.**

There are several cases of leasing a piece of territory by one State to another. In 1898, China leased Kiaochow to Germany who subsequently in 1919 renounced all her rights to Japan. In 1768, the Republic of Genoa pledged Corsica to France.

Such leasing rights tend in practice to constitute actual cessions of territory.

**State Servitudes.**

These are rights granted by one State to another which accord to the grantee a right of user over the grantor's territory or impose on the grantor some restraint in favour of the grantee. Thus one State may grant to another a right of transit through its territory. There are innumerable examples of fishery servitudes, also railway and postal privileges. By treaties of 1783 and 1818, the U.S.A. acquired certain fishery rights in the territorial waters of British North America. According to the Anglo-French Convention signed in London in 1904, France retains the right of fishing in certain of the territorial waters of Newfoundland.

State servitudes are not usually extinguished by the territory affected falling under the supremacy of another State.

It may be noted that even semi-dependent States may acquire servitude rights in many cases.

N.B.—State servitudes must not be confused with certain limitations on territorial supremacy which have grown up under the law of nations, *e.g.*—

(1) restrictions on the use of neutral territory in favour of belligerents in time of war;

(2) when a State is compelled to admit the free passage of foreign merchantmen through its territorial waters.

**Spheres of Influence.**

These are territories which are adjacent to the possessions of a State and which the latter intends ultimately to acquire and control. With this object, the colonising State often make treaties with other States by which it reserves to itself the *exclusive* right of future occupation, with a view to avoiding future encroachments and conflicts.

No jurisdiction is assumed or territorial rights created, so that no prescriptive right arises. The tendency has been for Spheres of Influence to become Colonial Protectorates.

Though non-contracting States are of course not legally bound by such agreements, an utter disregard of them would be construed as an unfriendly act. Spheres of influence were established as between Great Britain and France with respect to certain African territories, by agreements made in 1890, 1891, and 1898. Similar arrangements have been made by agreement with Germany and Portugal.

**Right to Occupy and Administer.**

This is a form of control by which the sovereignty over a piece of territory is nominally vested in one State and the actual control and administration in another.

Great Britain occupied and administered the Turkish island of Cyprus from 1878 to 1914 when it was annexed by Great Britain. After 1878, Bosnia and Herzegovina were occupied and administered by Austria-Hungary subject to the nominal sovereignty. In 1908, however, Austria-Hungary formally repudiated the Turkish sovereignty and annexed the provinces.

**Condominium.**

A territory may sometimes be under the joint sovereignty of two or more powers. An example was created by a Convention of 1899 by which the Soudan was made subject to the *condominium* of Great Britain and Egypt.

[40] In 1893 the claim of U.S.A. to legislate against seal killing in portions of the Behring Sea was rejected (see the Behring Sea Arbitration, 1893, Pitt Cobbett's L. C., vol. 1, p. 117).

# PROPRIETARY RIGHTS OVER WATERS.

## 1. The Open Sea.

This comprises the salt water of the world with the exception of the marginal sea, inland seas and territorial straits, gulfs and bays.

Down to the seventeenth century, it was considered that States could appropriate portions of the open sea; *e.g.*, Venice proclaimed her sovereignty over the Adriatic, and Portugal claimed the Indian Ocean.

In 1609, this latter claim inspired Grotius to write the "Mare Liberum," in which he contended that the open sea cannot be under the sovereignty of any State. Gradually this view of the freedom of the open sea gained ground. Bynkershoek wrote an important work in its support called "De Dominio Maris" in 1702.

The freedom of the open sea is now a definite rule of modern International Law.[40] The general rule is that the open sea is wholly exempt from State sovereignty and that there is freedom of navigation for the vessels of all nations. Further, maritime ceremonials, such as salute, are not obligatory on the open sea.

### Qualifications.

In certain cases a State exercises jurisdiction on the open sea :—

(1) Over pirates at International Law.
(2) Over all ships flying its flag on the high seas.
(3) Over foreign private vessels which have committed a municipal offence in territorial waters and have escaped to the high seas.
(4) Over foreign vessels reasonably suspected to be engaged on operations hostile to its security or safety.
(5) Over neutral vessels in time of war in order to prevent or punish unneutral service.

Every State can make laws regulating fishing by its vessels on the open sea, and by treaty it can renounce its fishery rights in portions of the open sea.

[41] The North Sea Fisheries Convention was signed in 1882 by England, Belgium, France, Denmark, Holland and Germany. The International Convention for the Protection of Submarine Telegraph Cables was signed at Paris in 1884. The International Radiotelegraph Convention was signed at Washington in 1927.

[42] *St. Lawrence Controversy between U.S.A. and Great Britain* (1826), Pitt Cobbett's L. C., vol. 1, p. 107. U.S.A., a riparian State of the upper waters of the River St. Lawrence, claimed that there was a right of innocent passage through the lower portions in order to reach the sea. The matter was finally settled by a treaty in 1854 which gave the U.S.A. the right of navigation subject to the payment of tolls.

The Treaty of Washington, 1871, opened the St. Lawrence to the U.S.A.

By means of international agreement there has been considerable legislation in connection with the open sea.[41]

## *RIVERS.*

Rivers may be classified generally as "national" and "international." The former are navigable rivers which lie wholly within the borders of one State, *e.g.*, the Seine; the latter are rivers which are navigable from the open sea and which flow through more than one State, *e.g.*, the Rhine. *National rivers* are under the exclusive sovereignty of the State, in the absence of treaties.

Grotius contended that there was a right of innocent passage through rivers. This is certainly not a matter of right, in the absence of treaty, and at most purely a matter of comity, for the territorial Power has complete sovereignty. A right of navigation is usually conceded to other States for non-trading purposes.

Boundary rivers are under the sovereignty of the States which they separate, the boundary line running through the middle of the deepest channel, subject to a common right of user and navigation over the whole river.

### International Rivers.

In strict law, each State has jurisdiction over that portion of the river that lies wholly within its territory and can exclude foreign vessels or admit them at its discretion, in the absence of treaties.

The nineteenth century saw many Conventions which provided for freedom of navigation on most international rivers.

It has been contended, however, that even apart from treaty there exists an "imperfect right" of innocent passage over waters otherwise territorial.[42] It is submitted that such a right is purely a moral one and dependent on comity. The whole trend of modern international practice indicates the application of the principle of free navigation upon rivers. This, however, is wholly the product of treaties.

### The Freedom of International Rivers.

In Arts. 108—117, the Congress of Vienna proclaimed the freedom of navigation on the international rivers of Europe subject to reasonable dues and police regulations. Regulations were also provided for free navigation on the Rhine, Scheldt and Meuse, but these were really effected much later.

**The Danube.**

The Treaty of Paris, 1856, Art. 15, provided for freedom of navigation on the Danube and set up the European Danube Commission for the regulation of navigation on the lower Danube. The treaty declared that international rivers were to be open to the navigation of *all* vessels, not only those of riparian States.

In 1920, the European Commission consisting of Great Britain, France, Italy, and Roumania were given jurisdiction from Braila to the Black Sea.

In 1922 a Statute of the Danube was executed by a Convention, and an International Commission was set up consisting of representatives of several non-riparian States. This Commission has jurisdiction from Ulm to Braila.

**The Rhine** was declared free to all merchantmen by the Convention of Mannheim, 1868, subject, however, to many restrictions on non-riparian States. The Peace Treaty of 1919 re-enacts the Convention of Mannheim, but abolishes the prohibitive restrictions.

By the Peace Treaty of 1919 certain portions of European rivers were declared international and the vessels of all Powers were to be given equality of treatment, *viz.*, the Danube up to the Ulm including the Rhine-Danube waterway, when constructed; the Elbe from its confluence with the Ultava; the Oder from its confluence with the Oppa; the Niemen from Grodno.

**American Rivers.**

The St. Lawrence was opened to the U.S. by treaties in 1854 and 1871.

Freedom of navigation on Alaskan rivers was accorded as between Great Britain and U.S.A. by a Treaty of 1871.

In 1867, a decree opened the Amazon, the Tocantins and the San Francisco to all foreign vessels.

**African Rivers.**

The principle of free navigation for all States on the Congo and Niger was established by the Conference of Berlin, 1884-85, Final Act. This was affirmed and supplemented by the Convention of St. Germain, 1919.

**China.**

In 1862, China opened the Yang-tse-kiang to British merchant vessels, subject to conditions, and this privilege was gradually extended to other States under "most favoured nation" clauses. In 1898 the merchantmen of Treaty Powers were given free access to the Yang-tse-kiang subject to goods being landed and shipped at certain specified ports.

**The Barcelona Convention on International Waterways** was produced by the League of Nations in 1921, the Conference containing representatives of forty States.

This enacts that reciprocal rights of navigation are afforded on the navigable waterways of the contracting parties on a basis of absolute equality. The riparian State must maintain the river and obviate dangers to navigation, and only dues necessary for maintenance may be levied.

An additional Protocol was signed by several States, including Great Britain, by which reciprocal rights are given to the signatories, in time of peace, "as regards the transport of imports and exports without transhipment."

[43] Cf. section 7, Territorial Waters Jurisdiction Act, 1878. The Behring Sea Arbitral Tribunal recognised the three-mile limit as the extent of territorial waters. The British-American Liquor Treaty of 1924 declared that the proper limits of territorial waters were "three marine miles extending from the coastline outwards and measured from low-water mark."

[44] Bynkershoek's rule being that "terrae potestas finitur ubi finitur armorum vis."

[45] This standard was taken by the North Sea Fisheries Convention, 1882.
Cf. the *North Atlantic Coast Fisheries Case* decided by the Permanent Court of Arbitration in 1910.

[46] *Direct U.S. Cable Co.* v. *Anglo-American Telegraph Co.* (1877), L. R. 2 App. Cas. 394. This was an appeal against an injunction to restrain the cable company from laying a cable inside the Bay of Conception which is over twenty miles wide, on the east coast of Newfoundland. The telegraph company had been granted exclusive rights by Newfoundland legislation. The appeal was dismissed as it was held that the bay had become by prescription part of the exclusive territory of Great Britain.

# TERRITORIAL WATERS.

It is a principle of International Law that a certain strip of marginal sea is regarded as part of the territory of the littoral State and under its sovereignty, subject to the right of innocent passage vested in the vessels of other States.

The maritime belt may be generally said to extend within one marine league of the coast, measured from low-water mark.[43] This limit was originally fixed because it coincided roughly with the range of artillery [44] and therefore might be rightly territorial, since it was capable of valid appropriation.

The individual practice is, however, far from uniform. The Institute of International Law has decided in favour of six miles as the breadth of the maritime belt. Spain claims six miles, Uruguay five miles, and Norway four miles as the breadth of their territorial waters.

Notwithstanding the right of innocent passage accorded to foreign vessels, the littoral State exercises control with respect to navigation, customs and sanitation and may exclude foreign vessels from navigation and trade along the coast.

### Gulfs and Bays.

The extent to which gulfs and bays are territorial is not exactly defined. Gulfs and bays which are enclosed by the land of the same littoral State, the entrance of which is not more than six miles in width, are definitely territorial. There is authority, however, for the view that the bays are territorial and subject to the jurisdiction of the littoral State if the distance from headland to headland is less than ten miles across at its entrance.[45]

Many territorial gulfs and bays largely exceed even this limit and international practice differs widely in the matter. Where a State has regarded a bay as territorial and this claim has been acquiesced in by other States, it is safe to say that it forms part of the national territory.[46]

France claims as territorial the Bay of Cancale though it is seventeen miles wide.

U.S.A. claims that Chesapeake Bay (twelve miles wide), Delaware Bay (eighteen miles wide), and Cape Cod Bay (thirty-two miles wide) are all territorial.

Great Britain claims that Hudson Bay (entrance fifty miles) is territorial—though this is disputed by the U.S.A.

**Straits.**

Straits which are six miles or less in width are clearly territorial; if they divide two different States, they belong to the territory of both, the boundary line running through the middle, in the absence of treaties.

Certain States claim wider straits as territorial, owing to custom.

The territoriality of the marginal sea may be compared with that of straits, and similar rules apply.

There is freedom of innocent passage on straits, but foreign vessels may be excluded when a strait belonging to one State exclusively connects part of the open sea with a territorial gulf or bay.

The Dardanelles and Bosphorus occupy a special position, being subject to special regulations. The Treaty of Lausanne, 1923, formed a Straits Convention which recognised freedom of transit and navigation in the Dardanelles and the Bosphorus. Merchant ships and non-military aircraft possess freedom of passage in time of peace; in time of war, neutral vessels have freedom of passage subject, of course, to Turkey's right of search, etc. Warships and military aircraft in time of peace also have freedom of passage, but no Power may send through the Straits a force greater than that of the most powerful fleet possessed by a littoral Power of the Black Sea. In time of war, if Turkey is neutral, warships still have freedom of passage, though the above proviso does not apply.

[47] *Mighell* v. *Sultan of Johore*, [1894] 1 Q. B. 149. Sultan of Johore had passed as a private individual and was sued for breach of promise. Colonial Secretary had informed the Judge that Johore was an independent State. *Held*, the foreign Sovereign was exempt from the jurisdiction. (Cf. *The Parlement Belge*, *supra*, p. 84.)

# INTERNATIONAL INTERCOURSE.

## *REPRESENTATION.*

**1. Heads of States.**

The individual head of a State embodies its sovereignty and is its representative in all international relations.

A foreign Sovereign is completely exempt from the local jurisdiction unless he elects to submit to the jurisdiction, and such submission cannot take place until the jurisdiction has been invoked. A certificate from the Foreign Office, or Colonial Office, is conclusive as to the status of a foreign Sovereign.[47]

The foreign Sovereign will be under the local jurisdiction when he is simultaneously a subject of the Crown, and the suit relates to acts done in his private capacity, though there is a presumption in his favour that such an act was done in his capacity as a Sovereign.

Where a Sovereign acquires property in a foreign territory as a private individual, the local Courts have jurisdiction over all suits relating to the property.

The local Court has jurisdiction over property or a fund in which the foreign Sovereign is interested, but which is subsequently found in the hands of some private person or body subject to the local jurisdiction.

The foreign Sovereign may be forcibly expelled from the local territory if he commits or authorises acts against the safety of the community.

He may, however, sue in the local Courts in respect of his private rights and property.

At common law, it is a misdemeanor to libel a foreign Sovereign with intent to endanger the peaceful relations between the United Kingdom and his State.

A Sovereign within the territory of a foreign State receives official honours and he is exempt from customs duties.

**2. Diplomatic Agents.**

Diplomatic agents are the official and publicly accredited agents of a State in foreign countries. The right of legation is mainly limited to sovereign States, though semi-sovereign States have sometimes a provisional right.

The Holy See sends and receives diplomatic envoys.

Judges of the Permanent Court of International Justice and delegates to the League of Nations possess diplomatic privileges and immunities. The British self-governing Dominions possess the right of legation.

States send envoys either to represent them on some particular occasion such as a coronation or a conference, or to reside in some particular State and represent them permanently. Such permanent legations, which appear to date generally from the fifteenth century, are now an integral part of the international system.

By virtue of the Congress of Vienna, 1815, and the Congress of Aix-la-Chapelle, 1818, there are now four classes of diplomatic agents, divided according to rank :—

(1) Ambassadors, papal legates and nuncios. Only the greatest States send ambassadors, who may communicate personally with the head of the State to which they are accredited.

(2) Ministers plenipotentiary and envoys extraordinary, accredited to Sovereigns, who are not, however, regarded as personal representatives of their sovereigns, and are not entitled to treat with the head of the State personally.

(3) Ministers resident, accredited to Sovereigns but ranking in dignity below class (2).

(4) *Chargés d'affaires*, accredited to Ministers of Foreign Affairs.

A refusal to carry on diplomatic intercourse would constitute an unfriendly act, but the refusal to receive a particular person would not be objectionable if he had shown himself avowedly hostile to the State to which he is accredited or if he was personally objectionable to the head of the State.

States frequently refuse to receive their own subjects as envoys from foreign Powers.

Diplomatic missions terminate with the recall of the envoy; war between the sending and the receiving States; fulfilment of the object of the mission; revolutionary change of government in either State; death of the envoy; death or abdication of the head of either State; the extinction of either State by merger or annexation.

A diplomatic agent constitutes the medium of communication between his own State and that to which he is accredited. He negotiates treaties and conventions and watches over the interests of his State. To this end, he reports every matter which might affect his home State. The ambassador has the task of protecting the interests of

[48] It is a misdemeanor to violate any privilege conferred on diplomatic representatives.

[49] In 1896, Sun Yat Sen, a political refugee from China, residing in London, was forcibly detained in the Chinese Legation in order to be sent to China. The Chinese envoy contended unsuccessfully that the Legation was Chinese territory and that the British Government had no right to interfere. The British Government demanded his release and he was freed.

[50] *Re Suarez*, [1918] 1 Ch. 176.

his countrymen in the State to which he is accredited, and of seeing that they secure justice and protection. Diplomatic envoys often exercise other official functions such as the registration of deaths, births and marriages of his countrymen and the issue of passports.

It is an established rule that diplomatic envoys should not interfere in local politics under pain of recall or dismissal.

**Privileges and Immunities.**

Not only the ambassador but his family and staff are entitled to diplomatic privileges. A list of members of the suite is usually supplied to the Foreign Office of the receiving State. In Great Britain the law relating to diplomatic immunity is governed by the common law and partly by the Diplomatic Privileges Act, 1908.

Diplomatic agents, like Sovereigns, have a right to freedom from arrest or molestation, and offences against ambassadors are punished with special severity.[48] They are exempt from subpœna as witnesses. Moreover, they are largely exempt from taxes, though the practice varies.

The diplomatic agent's residence is exempt from the local jurisdiction and all ordinary forms of legal process. The residence may not be converted into an asylum for fugitives from local justice and criminals must be surrendered at the request of the local State. The envoy has no right to exercise jurisdiction within the legation.[49]

The diplomatic agent is exempt from the local criminal jurisdiction and he cannot be tried by the local Courts. Diplomatic recourse must be had to the home State, and if the case is one of extreme gravity he may be summarily deported. As a matter of comity, the ambassador is expected to observe the local administrative and police regulations.

An ambassador is exempt from civil proceedings which would interfere with his official duties. Real property held by him as a private individual is subject to the local jurisdiction. Where diplomatic privilege has been waived by the envoy *with the consent of his Government*, such waiver extends to all subsequent proceedings and a writ may be issued against his property after his diplomatic privilege has terminated.[50]

Diplomatic immunity extends to such reasonable time after the envoy's recall as may be necessary for him to wind up his business. The Statute of Limitations does not run against a creditor during the period of such immunity.

[51] *Viveash* v. *Becker* (1814), 3 M. & S. 284. Defendant was consul to the Duke of Oldenburg and had been arrested for a debt incurred as a merchant resident in London. *Held*, that a consul was not a public Minister, that he is liable to arrest and not immune from the ordinary jurisdiction.

[52] In 1856, three British consuls in U.S.A. were dismissed for their attempts to recruit men for the British army during the Crimean War.

**Consuls.**

Consuls are commercial, not diplomatic, agents, and are not exempt from the local jurisdiction.[51] Consuls act generally under a commission from their Governments which is generally endorsed by the receiving State. Consuls, like diplomatic agents, need not be accepted if the local State objects to the individual appointed. Their *exequatur* (the endorsement on their commission) may be revoked if they are guilty of unfriendly or improper conduct.[52] Consuls remain unaffected by changes of government.

Consuls do not represent their States internationally, though they are officially recognised by the local Power.

The general functions of a consul are to watch over the commercial interests of his State and its nationals and to give the latter advice and assistance. Consuls also exercise many administrative functions such as the administration of oaths, the registration of births, deaths and marriages, the administration of the estates of subjects dying intestate, the receiving of protests and reports from masters of vessels of their State, and jurisdiction over their crews.

Consuls representing Western States in non-Christian countries occupy a special position in accordance with custom or treaty. They possess diplomatic immunities and privileges and have wide judicial authority over their countrymen.

Although subject to the local laws, a consul by virtue of his position enjoys certain customary privileges which are often confirmed and extended by consular conventions.

He is entitled to safe conduct and his official papers are inviolable. He is exempt from personal taxation and from service on juries or in the militia. Soldiers may not be billeted on him.

[53] *Foster* v. *Neilson*, 2 Det. 314.

# TREATIES.

"A treaty is in its nature a contract between two nations. It does not generally effect, of itself, the object to be accomplished . . . but is carried into execution by the sovereign power of the respective parties." [53]

**Classification.**

McNair, in the "British Year Book of International Law" (1930), pp. 100—118, adopts a good working classification of treaties :—

(a) Treaties having the character of conveyances.
(b) Treaties having the character of contracts.
(c) Law-making Treaties which may sub-divide into :—
    (1) Treaties creating constitutional law; *e.g.*, the Statutes of the Permanent Court of International Justice.
    (2) Pure Law-making Treaties; *e.g.*, the several Labour Conventions negotiated by the International Labour Organisation.
(d) Treaties akin to Charters of Incorporation; *e.g.*, Treaties which established the Universal Postal Union.

**Validity.**

A State may contract with individuals or corporations, but such treaties are not subjects of International Law.

Every sovereign State has full contracting power, but semi-sovereign States or members of a confederation are limited in their contractual capacity by the restrictions placed upon them in each particular case.

The conditions of validity greatly resemble those essential to municipal contracts.

(1) *There must be capacity to contract.*
(2) *There must be consent.*

In International Law, duress will not vitiate a treaty, for otherwise peace treaties would have no validity. However, coercion of the representative of a contracting State will vitiate the contract. Except where a treaty has been concluded by the supreme treaty-making Power, international practice indicates that all treaties signed by agents are

subject to ratification by the supreme contracting authority. Treaties generally contain a clause that they are subject to ratification (which must in all cases be absolute). Ratification may be tacit, as when a contracting State commences to execute the agreement without formal ratification. A State has a perfectly legal right to refuse to ratify a treaty, though this ought not to be refused, some writers maintain, in the absence of "solid reasons."

The treaty-making power of States varies greatly. In Great Britain it is vested in the Crown acting on the advice of the Cabinet. Treaties which derogate from private legal rights must, however, receive the sanction of an Act of Parliament. In U.S.A. it is vested in the President subject to the approval of two-thirds of the Senate. According to Art. 8 of the French Constitution, the treaty-making power resides in the President, though treaties of peace, commerce and finance and those affecting the status of persons and the rights of property of Frenchmen abroad are only binding after having been voted by the two Chambers.

(3) *Legality of object.*

All agreements which are at variance with the fundamental principles of International Law are not binding.

Art. 18 of the Covenant of the League of Nations states: "Every treaty or international engagement entered into hereafter by any Member of the League shall be forthwith registered with the Secretariat and shall as soon as possible be published by it. No such treaty or international engagement shall be binding until so registered."

**Interpretation.**

Ordinary words in a treaty should be construed in their ordinary sense unless such words have a customary meaning in treaties. If a stipulation is ambiguous the reasonable construction is to be preferred to the unreasonable. Words must be interpreted in the sense which they would normally have in their context, unless this would lead to unreasonableness or absurdity.

Previous treaties between the same parties and treaties between one of the parties and third parties may be referred to in order to elucidate the meaning of a clause. The Permanent Court of International Justice has rejected the view that the records of the preparatory work of a conference are admissible in the interpretation of the treaty when the text of the convention is clear. If a stipulation is doubtful, the purpose of the treaty and the prevailing conditions may be taken into consideration. "Provisions in

[54] *The Wimbledon Case*, P. C. I. J. Series A, No. 1.

[55] Art. 11 states: "It is also declared to be the friendly right of each Member of the League to bring to the attention of the Assembly or of the Council any circumstance whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends."

Art. 19 provides that "the Assembly may from time to time advise the reconsideration by Members of the League of treaties which have become inapplicable and the consideration of international conditions whose continuance might endanger the peace of the world."

a treaty imposing on a State limitations on the exercise of its sovereign rights should, in case of doubt, be interpreted narrowly." [54] Where two treaties conflict which are made with different States at different times, the earlier will prevail; where the conflict is between two treaties made between the same States at different times, the latter prevails, it being presumed to have been made in substitution for the former.

**The Binding Force of Treaties.**

Treaties are extinguished in various ways, *viz.* :—

(1) When their objects are satisfied, *e.g.*, the payment of an indemnity.
(2) By mutual agreement of the parties.
(3) Impossibility of execution.
(4) By becoming incompatible with the established principles of law or with the general obligations of State.
(5) By the extinction of one of the contracting parties, *e.g.*, by annexation or merger.

If one of the contracting States violates a treaty, the other may cancel it at its discretion, unless there is a stipulation to the contrary.

**The Doctrine of "Rebus sic stantibus."**

The voidability of treaties is a matter of much controversy, since it is difficult to reconcile the view of the "sanctity" of treaties with the *Rebus sic stantibus* doctrine. Many writers support the latter; they maintain that it is an implied condition of a treaty that it may be avoided by any vital change in the conditions which prevailed at the time when it was concluded.

It is submitted that treaties should not be regarded as eternal and that their continued application may be oppressive in certain cases. The *Rebus sic stantibus* doctrine is a dangerously elastic one, however, since it can be so readily invoked as a ground for repudiating international agreements.

The Permanent Court of International Justice has not yet given an authoritative decision on the matter.

The Covenant of the League has made some effort to cope with the problem.[55]

# THE LEAGUE OF NATIONS.

The League was established by the Covenant of the League of Nations which forms an integral part of the Treaty of Versailles, 1919. The League has two principal objects:

(a) The maintenance of international peace and security.

(b) The promotion of international co-operation.

**Constitution.**

The League consists of fifty-seven Members and contains practically all civilised Powers except U.S.A. and Russia. U.S.A. has often co-operated without, however, accepting political obligations. The League is not confined to States with one particular form of government, and such dependent States as India and Cuba have been admitted.

A State may withdraw from the League by giving two years' notice of intention to withdraw and by the fulfilment of all its international obligations. Brazil has left the League. Japan withdrew from the League in March, 1933, in consequence of the League's unanimous disapproval of her action in Manchukuo. She, however, expressed her willingness to continue to co-operate on non-political issues. New Members may be admitted if this is agreed upon by two-thirds of the Assembly.

The official languages of the League are French and English.

The League works through the Assembly, the Council and the Secretariat.

The Assembly consists of representatives of the Member-States. Each Member has one vote and is entitled to three delegates. The Assembly meets normally once a year; its meetings are held in public, and its decisions must be unanimous unless otherwise provided by the Covenant.

The Council consists of permanent representatives (British Empire, France, Italy and Germany) and four other non-permanent Members selected by the Assembly. Additional Members may be nominated by the Council with the approval of a majority of the Assembly.

Each State represented on the Council has only one vote and one representative. The Council normally meets four times a year, and its decisions require unanimity. Theoretically, either body may deal with any matter within the sphere of the League, but in practice the Council is the administrative and executive organ.

The Secretariat is a permanent body established at Geneva consisting of a Secretary-General and his staff appointed by the Council. The Secretariat is a truly international body exercising the functions of a national civil service. The work is divided into sections which correspond with the principal spheres of activity of the League.

**(a) The Maintenance of World Peace.**

Art. 10 provides that "the Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League."

Art. 12 states that "the Members of the League agree that if there should arise between them any dispute likely to lead to a rupture, they will submit the matter either to arbitration or judicial settlement or to inquiry by the Council, and they agree in no case to resort to war until three months after the award by the arbitrators or the judicial decision or the report by the Council."

Arts. 8 and 9 provide for the reduction of national armaments.

It may be observed that Art. 10 was quoted in the Bulgaria-Greece incident of 1925 and the Abyssinia incident of 1926.

The Council has also done much to settle disputes between Greece and Turkey.

The League exercises other important functions under the Peace Treaties. It supervises the mandatory system and the execution of pledges by various States to guarantee certain rights to national, religious, and linguistic minorities.

The League is also responsible for the protection of the Free City of Danzig.

**(b) The Promotion of International Co-operation.**

Art. 23 pledges the Members of the League to "endeavour to secure and maintain fair and humane conditions of labour for men, women and children, both in their own countries and in all countries to which their commercial and industrial relations extend." An Inter-

national Labour Office has been established which is an autonomous body, but assisted by the Secretary-General of the League. The Office is controlled by a Governing Body of twenty-four, twelve representing Governments, six delegates representing employers, and six representing the workers. The Conference has representatives from all Members of the League. The Office has made great efforts to build up a general code of labour law and already thirty-one conventions have been adopted by General Conferences.

The League has set up an organisation for communications and transit in accordance with Art. 23 (e) of the Covenant, which pledges the Members to "make provision to secure and maintain freedom of communications and transit, and equitable treatment for the commerce of all Members of the League." Many conventions and agreements have been formed by the organisation since 1921.

In accordance with Art. 23 (c) the League has pursued many social and humanitarian activities with respect to the Drug Traffic and the Protection of Women and Children. Similarly, the League has contributed greatly to international co-operation in connection with slavery and forced labour, and international hygiene.

[56] The appointment of an International Commission of Inquiry averted serious consequences in 1904 as the result of the Dogger Bank incident, in which the Russian fleet had fired upon British trawlers.

# INTERNATIONAL TRIBUNALS.

There has been an increasing tendency in favour of the pacific settlement of international disputes. Since 1900 many arbitration treaties have been concluded between States who have agreed to submit their disputes to arbitration. Many such treaties, however, stipulate that matters involving the vital interests, the national honour or the independence of the two States are not to be arbitrated.

Definite arbitral machinery has now been set up. The Hague Convention of 1899, revised in 1907, set up the Permanent Court of Arbitration, which is composed of four Members selected by each of the signatory States.

N.B.—Serbia's proposal to Austria in 1914 to submit their disputes to the Permanent Court was rejected.

The Hague Conventions introduced the machinery of Commissions of Inquiry, which investigate and elucidate the facts of a dispute but do not make award. They leave entire freedom of action to the parties.[56]

This practice inspired the "Bryan treaties" which have been concluded between U.S.A. and many other States. These treaties provide that where diplomacy and arbitration do not effect a settlement, disputes shall be investigated by an International Commission of Inquiry which must report within a year, the parties being pledged not to resort to war until the report is received.

The Permanent Court of International Justice was established in 1921, by a statute in accordance with the provision made in Art. 14 of the Covenant. The judicial candidates are nominated by the national groups of The Hague Court of Arbitration of 1907. Each nominates four candidates, and two are to be of other nationality than the nominators. From this list the Council and the Assembly each elect fifteen Judges (in accordance with the revised statute), those with an absolute majority in both bodies being finally chosen. Only one Member of the same State may be elected.

The Court sits annually at The Hague and is open to Members of the League, though a Member State may urge the cause of its subjects against another State before the Court.

The jurisdiction is voluntary, though Art. 36 of the statute contains an "optional clause" which confers compulsory jurisdiction on the Court when signed by a State. Britain signed in 1929. Precedents are not binding on the Court. Cases are heard in public, unless the Court decides otherwise. The quorum of the Court is nine and the official languages are English and French, though other languages may be authorised by the Court.

Besides the full Court, there are three special Chambers :

(a) For interpretations of the International Labour Organisation.
(b) For questions of Transit.
(c) For Summary Procedure.

The Court exercises an important advisory jurisdiction under Art. 14 of the Covenant : "The Court may also give an advisory opinion upon any dispute or opinion referred to it by the Council or the Assembly." In the *East Carelian Case*, when Finland sought the decision of the Court on a treaty with Russia, the Court refused to give one, since such an opinion is tantamount to a judgment, and Russia had not submitted to the jurisdiction of the Court.

Between 1922 and 1932 the Court delivered forty-six judgments, orders and opinions.

The General Act of 1928, for the pacific settlement of international disputes, was produced by the ninth Assembly of the League. It provides a scheme for the settlement of political disputes by Conciliation Commissions.

Russia and America have not accepted the Act, and Britain has made many reservations.

[1] A good example is the bombardment and occupation of Corfu by Italy in 1923 to obtain redress for the murder of Italian officers.

[2] The Sicilian Government had violated a treaty of commerce with England and the latter made reprisals in 1839 by capturing Sicilian vessels in the Mediterranean. The difference was ultimately settled and the ships were restored.

[3] The nineteenth century has seen many pacific blockades. In 1827, Greece was blockaded by English, French and Russian vessels.

In 1831, France, without declaring war, blockaded Portuguese ports and thereby secured reparation for injuries inflicted on French subjects.

[4] In 1838, France without a formal declaration of war,

# THE LAWS OF WAR.

## *METHODS OF REDRESS SHORT OF WAR.*

It is necessary to examine certain unfriendly acts of force which constitute modes of redress falling short of war.

### 1. Retorsion.

Retorsion is a retaliatory policy which consists in the unfriendly imposition of embarrassing restrictions by one State on the subjects of another, if the latter has acted in a similar fashion. An obvious instance is retaliation by imposing analogous preferential duties.

### 2. Reprisal.

Reprisals are unfriendly acts of retaliation and often preliminaries to actual war. They consist usually in the temporary occupation of some part or area belonging to the offending State or in the suspension of the operation of treaties. They are acts prompted by urgent necessity for redress and are usually committed as against minor Powers.[1]

The commonest form of reprisal is "*embargo*" which usually takes the form of the provisional detention by one State of the ships and property of another State in its own parts. Such property is confiscated if war is declared eventually.[2]

This practice is now almost obsolete since the Convention formed by The Hague Conference, 1907, which forbids the seizure of vessels in anticipation of war and even concedes to enemy vessels the right to depart at the outbreak of war, unless such vessels are merchant ships whose build suggests that they are to be converted into warships.

### 3. Pacific Blockade.

This is a modern coercive act short of war which consists in the closing of access to the coasts of an offending State.[3]

The practice has differed widely and several so-called pacific blockades have been enforced against the vessels of third States.[4]

Pacific blockade is sometimes employed as a police measure by a group of Powers wishing to enforce on some

blockaded the ports of Mexico, but seized and confiscated the vessels of third States. War was subsequently declared by Mexico.

[5] In 1886, many of the Great European Powers instituted a blockade of the coasts of Greece in order to avoid the outbreak of war between the latter and Turkey, and to preserve the peace of Europe.

resisting State a course of conduct necessary to international peace and security.[5]

War may be defined generally as an armed contest between States. International war will not include private war or conflicts with insurgents or pirates, though an armed conflict between a sovereign State and a vassal State will constitute war. Civil "wars" become true wars by the recognition of the insurgents as a belligerent Power, though this status is lost if the legitimate Government subsequently re-occupies the territory.

Recognition should only be given by third States as a measure of self-protection. This is usually afforded when a third party considers that its interests will be affected if the insurgent State is denied the status of a belligerent and the enjoyment of belligerent rights.

Recognition is only legitimately permissible in certain circumstances, otherwise it constitutes an unfriendly act towards the parent State. Recognition may be given provided that the insurgents—

(1) Possess territory.
(2) Have established some form of organised government.
(3) Conduct the conflict according to the accepted laws and customs of war.

Recognition by third States is usually accorded by a formal declaration of neutrality: such recognition cannot be revoked, except by agreement, while the state of war continues.

The parent or enemy State need not grant recognition, though in practice it generally does so, rebel prisoners being treated as prisoners of war and not as traitors.

[6] The practice has varied considerably.

In the Russo-Japanese War, Japan suddenly attacked Port Arthur the day before she issued a declaration of war, in the form of a proclamation addressed to her own subjects.

Germany violated French territory in 1914 before formally declaring war.

[7] During the Great War, 1914-18, a formal declaration or the presentation of a conditional ultimatum almost invariably preceded hostilities.

# COMMENCEMENT OF WAR.

War is a question of *fact* and the date of the commencement of war depends on circumstances. Under the customary law no attack might lawfully be made unless friendly relations had been terminated in sufficient time and under such circumstances as to obviate all reasonable danger of surprise.

War may be said to commence :—

(1) By a formal declaration, unilateral or bilateral.
(2) By some act of force committed with intent of war.
(3) By some act of force construed by the aggrieved party as an act of war.

Grotius stated that a formal declaration of war is necessary for its commencement. This has not been generally approved by the practice of States, and the commencement of war has frequently been a matter of policy and strategy.[6]

A declaration of war or a conditional ultimatum has become increasingly usual, and, as a matter of courtesy and convenience for neutrals, a manifesto or notice is usually issued before the commencement of war.[7]

An attempt was made by Hague Convention III, 1907, to convert this practice into a legal obligation. This was signed by all the States enumerated in the Final Act except China and Nicaragua.

In Art. 1 this Convention recognises that as between the contracting parties hostilities ought not to commence "without previous and explicit warning in the form either of a reasoned declaration of war or an ultimatum with conditional declaration of war."

Art. 2 provides that the existence of a state of war should also be notified to neutral Powers without delay, and shall not take effect in regard to them until after the receipt of a notification, which may, however, be given by telegraph, although neutral Powers cannot plead the absence of notification in a case where it is established beyond question that they were in fact aware of the state of war.

[8] When an enemy merchant ship is captured by a belligerent, such of its crew as are nationals of a neutral State shall not be made prisoners of war, and the same rule shall also apply to the captains and officers, being neutrals, who agree in writing not to serve on an enemy ship during the war. Even where the captain, officers and members of the crew are nationals of the enemy State they shall not be made prisoners of war, provided they undertake by formal promise in writing not to engage whilst hostilities last in any service connected with the operations of war; the names of all persons entering into such engagements shall be notified to the other belligerent, who is forbidden knowingly to employ them during the war. These provisions are not to apply to ships that take part in hostilities.

[9] *Porter* v. *Freudenberg*, [1915] 1 K. B. 857 (C. A.). This was an action to issue a writ for rent due on defendant's business premises in London. The defendant resided and carried on business in Berlin. *Held*, leave may be given to issue a concurrent writ and make substituted service of notice of the writ by service of the notice upon the alien enemy's agent in this country.

# ENEMY CHARACTER.

**1. Persons.**

It may be generally stated that subjects of the belligerent possess enemy character, whereas neutral subjects do not; this rule being subject to exceptions.

Enemy character attaches to *all* persons whether subjects or not who serve in the armed forces of the enemy or assist him in the conduct of hostilities. It also attaches to all persons found in the employment of the enemy State. However, Art. 18 (a) of Hague Convention V, 1907, provides that the furnishing of supplies or loans by a neutral to one belligerent shall not confer enemy character provided that the neutral does not live in, and that the supplies do not proceed from, the territory belonging to or occupied by the enemy.

Art. 18 (b) provides that the rendering by a neutral to a belligerent of services in the matter of civil and police administration shall not confer an enemy character.

Enemy character attaches to persons found serving on board even private vessels of the enemy, subject to the provisions of Hague Convention XI, 1907, Arts. 5—8.[8]

Originally allegiance was the sole test of enemy character in war, but it has now been replaced by *domicil*.

"The test of a person being an alien enemy is not his nationality but the place in which he resides or carries on business. A person voluntarily resident in, or who is carrying on business in, an enemy's country is an alien enemy."[9]

Persons who, even though enemy nationals, reside and carry on trade in a neutral State are not treated as enemy persons.

There is a customary right in favour of the subjects of one belligerent found within the territory of the other. By virtue of this right, they are allowed to depart freely within a reasonable time, sufficient to wind up their affairs, and compatible with public safety, subject to an exception in the case of persons whose detention might be a matter of political or military necessity.

Though the practice has varied many States allow enemy subjects to remain, subject to municipal regulations and restrictions.

[10] *Schaffenius* v. *Goldberg*, [1916] 1 K. B. 284 (A. C.). The plaintiff, an alien enemy resident and registered in the United Kingdom, entered into a contract with the defendant and advanced money to him. The plaintiff was subsequently interned and the defendant refused to repay the money, contending that the contract was at an end. *Held*, that the contract was not affected by the plaintiff's internment and that he was not thereby deprived of his civil rights in respect of the contract made before internment.

[9] *Porter* v. *Freudenberg*.

[11] *Brown* v. *United States* (Pitt Cobbett's L. C., vol. 2, p. 65). Some British timber was sold to an American citizen after the outbreak of war between the two countries in 1812. It was seized by the U.S. authorities as prize of war. *Held*, that it was not liable to confiscation as there had been no legislative act authorising it, and that the mere declaration of war was not such authority.

An alien enemy cannot institute proceedings in the English Courts unless he continues to reside within British territory with the licence of the Crown.[10]

An alien enemy can be sued during war in respect of transactions commenced before or after the outbreak of war. Moreover, such rights of action revive on the return of peace. An alien enemy who is sued may enter an appearance to defend the action and to appeal from any judgment. If he commences the action before the war he cannot prosecute his appeal. The right of appeal, moreover, is suspended until the conclusion of peace.[9]

As a creditor in bankruptcy, an alien enemy may prove for a debt, the dividend being reserved until after the war or handed over to the statutory custodian. As a debtor, he made be made bankrupt and may apply for and obtain his discharge.

**2. Enemy Property.**

All goods belonging to persons domiciled in enemy country are enemy goods.

Moreover, property owned by a neutral becomes enemy property if subject to the control of the enemy or incorporated into his commerce.

(a) *Public Property.*

The property of the enemy State may be lawfully taken except such property as legal documents and works of art unconnected with the conduct of war.

(b) *Private Property.*

The property of enemy subjects is liable to seizure if of a kind immediately useful in war.

Enemy property found on land after the outbreak of war cannot be condemned without a legislative enactment authorising it.[11]

There is a conflict of opinion as to the obligatory immunity of private property, and practice has varied.

(In 1807, the Danish Government issued Ordinances sequestrating the property of British subjects found in Denmark.)

[" *Booty* " consists of movable property captured on land from the enemy. The title to booty vests primarily in the Crown, though in practice it is usually distributed amongst the forces engaged.]

**Enemy Vessels.**

The Declaration of London, 1909, provided that the enemy or neutral character of a vessel should be deter-

[12] *The Pedro.* 175 U. S. 354. A vessel flying the Spanish flag and owned by a Spanish corporation was liable to condemnation, notwithstanding that the legal or equitable ownership of the entire stock was in British subjects and the vessel herself insured with British underwriters.

[13] Art. 59 of the Declaration of London states that "in the absence of proof of the neutral character of goods found on board an enemy vessel, they are presumed to be enemy goods."

This principle was judicially approved by the British and French Courts during the Great War.

[14] *Daimler Co., Ltd.* v. *Continental Tyre and Rubber Co. (Great Britain), Ltd.*, [1916] 2 A. C. 307. An action commenced by the tyre company to recover from the respondents £5,600. Appellants pleaded that they were restrained from payment by the Trading with the Enemy Act, 1914. The tyre company had its registered office in London and sold German tyres here. The directors were German subjects. *Held*, the action must be struck out.

(Lord Parker's judgment is noteworthy. He declared that a company registered in the United Kingdom, but carrying on business in an enemy country is to be regarded as an enemy. The character of individual shareholders cannot of itself affect the character of the company.)

[15] The Trading with the Enemy Act, 1915, empowered the Crown to prohibit, in certain cases, persons or corporations resident in the United Kingdom from trading with any person resident or carrying on business in enemy territory or in territory in the occupation of the enemy. Subsequently "Black Lists" were issued.

mined by the flag she is entitled to fly. Thus a vessel flying a hostile flag assumes enemy character, whatever the nationality of her owner; this enemy character affects the whole vessel and binds all interests in it.[12]

An enemy-owned vessel, however, which sails under a neutral flag does not necessarily bear neutral character. Thus, a vessel which is found to be owned by a person domiciled or trading in the enemy country bears enemy character, even though flying the neutral flag. A vessel acquires enemy character even though flying the neutral flag, when she is virtually incorporated in the enemy navigation or trade, or is engaged in a trade carried on under the enemy's licence.

By Art. 46 of the Declaration of London, 1909, a neutral vessel was declared to be guilty of unneutral service and subject to condemnation if she took part in hostilities or was in the exclusive employment of the enemy fleet.

If the vessel is hostile then all goods on board are presumed to be enemy property and subject to condemnation unless proved by the owners to be neutral.[13]

**Corporations.**

The enemy character of corporations is a matter of dispute. The principle of domicil probably applies here as in the case of individuals.

The majority of the House of Lords in a leading case [14] held that a company incorporated and registered in Great Britain assumes enemy character if carrying on business in an enemy country or if its business is controlled by persons resident in an enemy country or acting as its agents.

The American practice is illustrated by this statement of Mr. J. Lehamn's: "At the present time the Courts of this country are wedded to the doctrine that the corporators of a corporation are conclusively presumed to be citizens of the same State as the corporation."

The French Courts relied on nationality as the test of enemy character, and the Government, in 1915, issued a black list of companies in neutral countries which were to be regarded as enemy corporations.[15]

[16] The Treaty of Shimonoseki, 1895, between China and Japan regarded all treaties as cancelled and made provision for a new commercial treaty.

In 1911 Turkey declared all her treaties with Italy to be dissolved; the Treaty of Lausanne, 1912, which concluded the war renewed them all.

The treaty of 1913 between Bulgaria and Turkey renewed postal, telegraph and railway conventions and expressly revived a convention of navigation and commerce.

[17] It may be generally stated that the Great War, 1914-18, annulled all treaties to which two belligerents were the only parties, subject to an option vested in the victorious Power to revive them.

[18] By Art. 282 of the Treaty of Versailles, 1919, certain multilateral treaties, conventions and agreements of an economic or technical character specified therein were to be renewed between Germany and those of the Allies party thereto.

# THE EFFECTS OF WAR.

**1. Treaties.**

No definite rules exist as to the effect of war on treaties owing to the divergence of opinion and practice.[16]

The general principles may best be discovered by distinguishing between :—

(a) Treaties to which only the belligerents are parties.

(b) Treaties to which other States are parties.

(a) Political treaties, like treaties of alliance, are abrogated by the outbreak of war, since they were not contracted in contemplation of a permanent *status quo*.

Treaties which *prima facie* give merely temporary concessions are annulled or suspended according to discretion.

Treaties which expressly contemplate a state of war remain in force; *e.g.*, those which provide for the neutralisation of certain areas.

Treaties which create rights *in rem*, such as those creating servitudes or boundaries, are not *ipso facto* dissolved by the outbreak of war.

Treaties which are concluded with the intention of setting up a permanent condition of things, such as conventions regulating the acquisition and loss of nationality, are not annulled by the outbreak of war, though their operation may be suspended, and they will revive automatically with the conclusion of peace unless positively rescinded.[17]

(b) Great law-making treaties to which non-belligerents and belligerents are parties, such as great territorial settlements, remain unaffected by war between the parties.

Certain treaties may be suspended in their operation if they impose continuous and active obligations and a state of war exists between some of the parties. Treaties of guarantee are instances of this class and they will be suspended if their fulfilment is inconsistent with the state of war.

Treaties which depend entirely on a state of peace as between the parties, *e.g.*, treaties of commerce, are annulled so far as the actual belligerents are concerned, though obligations towards third parties continue.[18]

[19] This principle was established by the English agreement in the Anglo-Prussian controversy of 1758 with respect to the Silesian loan. The subsequent practice has been in favour of this principle, though Russia is an exception.

[20] Lord Dunedin said in *Ertel Bieber & Co.* v. *Rio Tinto Co.*, [1918] A. C., at p. 273: "Upon the ground of public policy the continued existence of contractual relation between subjects and alien enemies or persons voluntarily residing in the enemy country which—

(1) gives opportunities for the conveyance of information which may hurt the conduct of the war, or

(2) may tend to increase the resources of the enemy or cripple the resources of the King's subjects,

is obnoxious and prohibited by our law."

[21] *Furtado* v. *Rogers*, 3 Bos. & P. 191. In 1792, plaintiff insured a French vessel with an English company. In 1793, war broke out between England and France, and the vessel was captured and condemned by the British. After the war, plaintiff sued for the insurance money. *Held*, that the contract was abrogated by war and plaintiff could not recover.

[22] In *Janson* v. *Driefontein Mines, Ltd.*, [1902] A. C. 484, however, it was decided that a contract of insurance for a parcel of gold was valid where it was seized by the Government of South Africa when war was imminent, but *before* it actually broke out.

[23] *Hugh Stevenson & Sons* v. *Aktiengesellschaft fur Cartonnagen-Industrie*, [1918] A. C. 239. These two companies were in partnership in England in the manufacture of clamps and they continued during the war to carry on the business and to use the partnership machinery. In 1915, the British company under the Legal Proceedings against Enemies Act, 1915,

**2. Financial Engagements of States.**

A debt contracted between one State and the nationals of another State will not be liable to repudiation if war breaks out between the two States. Moreover, private interests in public debts are exempt from sequestration and reprisals, both in peace and war.[19] Where a State guarantees a public loan made by individuals to some other State, the liability of the guarantor to the creditors is not affected by the outbreak of war between the debtor and the guarantor States.

**3. Commercial Intercourse.**

The general principle is that all commercial intercourse without licence between persons domiciled in the countries of the respective belligerents is prohibited.[20]

Contracts made before the war between persons divided by the line of war are merely suspended during the war as regards the right of performance and the right to sue. It is probable also that the operation of the Statute of Limitations is suspended during the war. Contracts are invalid, however, if they enure to the aid of the enemy.[21]

Contracts and transactions entered into during the war by persons divided by the line of war are illegal, void and unenforceable. Moreover, contracts between the subject of a belligerent State and a neutral subject are invalid if they cannot be fulfilled without some illegal dealing with the enemy.

This rule does not, however, apply to licensed trades or to persons who, though enemies in point of nationality, reside and contract in the territory of the same belligerent.

Registered alien enemies possess the rights of non-enemy aliens.

Art. 28 (h) of The Hague Regulations, 1907, forbids a belligerent commander in the occupation of enemy territory to suspend or abrogate rights of action on the part of subjects of the other belligerent or otherwise to interfere with purely civil relations.[22]

**Partnership.**

Partnership is dissolved by operation of law as soon as war is declared if the partners become enemies: this is subject to the right of the alien partner after the war to recover his equitable shares.[23]

A neutral with a personal domicil in a neutral country who is a partner in a business in an enemy country is presumed to have an enemy commercial domicil, though he

sought for a declaration to account for the value on August 4, 1914, or alternatively at its actual value at that date. *Held*, by the House of Lords, that though the partnership was dissolved, the German company was entitled to a share of the profits made after the dissolution by the English partner with the aid of the German company's machinery.

[24] *The Anglo-Mexican*, [1918] A. C. 422.

[25] See the various prohibitions and regulations imposed by the English emergency legislation (the Trading with the Enemy Acts).

[26] Section 6, sub-section 2 of the Trading with the Enemy Amendment Act, 1914, provided that no person should by virtue of any transfer of a bill or promissory note made or to be made in his favour by or on behalf of an enemy, whether for valuable consideration or otherwise, have any rights or remedies against any party to the instrument unless he proves that the transfer was made before the commencement of the War, and any party who knowingly discharged the instrument should be deemed guilty of trading with the enemy.

This was not to apply when the subsequent transfer was made *bona fide* and for valuable consideration.

is allowed a reasonable interval in which to dissociate himself from the business.[24]

The Trading with the Enemy Acts provided for State supervision and control over enemy partnerships.

**Sale of Goods.**

The outbreak of war dissolves contracts for the sale of goods and discharges performance where either party is an enemy, or performance entails intercourse with the enemy.[25]

**Contracts of insurance**, if made before the war, are suspended in their operation by war if the loss accrued before the war, though such insurance will not avail against losses incurred by the British capture of enemy property. Insurance contracts between British subjects will be invalid if made in furtherance of trade with the enemy.

**A contract of agency** between persons who afterwards become enemies is, like a partnership, dissolved by war and no fresh agency can be created during the war. An agent of an enemy cannot sue under a power of attorney.

**Negotiable Instruments.**

If made *before* the war and between persons domiciled in the respective belligerent States, negotiable instruments in the hands of an alien enemy cannot be sued on in time of war, though the right will revive after the conclusion of peace.

If made *during* the war they are illegal and nugatory even if transferred to a neutral or British subject.[26]

[27] The preamble to Hague Convention IV of 1907 declares "that populations and belligerents remain under the protection and rule of the principles of the Law of Nations, as they result from usages established between civilised nations, the laws of humanity, and the requirements of the public conscience."

[28] During the Great War Germany violated this principle repeatedly and was responsible for organised massacres of the civil population in different parts of Belgium.

[29] Quarter, however, may be legitimately refused to an enemy who has violated the laws of war.

[30] The Declaration of St. Petersburg, 1868, prohibited the use of any projectile of a weight below 400 grammes which is either explosive or charged with fulminating or inflammable substance.

Hague Convention, 1899, IV (2), prohibited "the

# LAND WARFARE.

The existing laws and customs of war on land are regulated by customary and conventional law.[27] Though war is undoubtedly subject to law, the various conventions have often proved quite inadequate in practice, as was evidenced frequently during the Great War.

The fundamental basis of the laws of war is the necessity of mitigating the hardships of war, and of limiting the measure of violence by its absolute practical necessity. The Germans, however, put forward the doctrine of "military necessity," which makes observance of the laws of war discretionary and entirely dependent on the successful attainment of the object of the war.

**Enemy non-combatants** are exempt from direct injury or violence, though they lose this immunity if they engage in hostilities.[28]

**Enemy combatants** are those who engage in hostilities; they are exposed to violence and injury during the continuance of hostilities, though on surrender or capture they are legitimately entitled to honourable treatment as prisoners of war.

**Methods of Warfare.**

Art. 28 of Hague Convention IV, 1907, declares that it is prohibited—

"(a) To employ poison or poisoned weapons.

"(b) To kill or wound treacherously individuals belonging to the hostile nation or army.

"(c) To kill or wound an enemy, who having laid down arms or having no longer means of defence, has surrendered at discretion.

"(d) To declare that no quarter will be given.[29]

"(e) To employ arms, projectiles or materials calculated to cause unnecessary suffering.[30]

"(f) To make improper use of a flag of truce, of the national flag, or of military insignia and uniform of the enemy, as well as the distinctive badges of the Geneva Convention.

use of projectiles the sole object of which is the diffusion of asphyxiating or deleterious gases."

These rules were grossly violated during the Great War.

By Art. 5 of the Treaty of Washington, 1922, U.S.A., the British Empire, France, Italy and Japan agree to prohibit the employment in war of "asphyxiating, poisonous or other gases and all analogous liquids, materials or devices."

[31] The Great War witnessed much indiscriminate bombardment.

" (g) To destroy or seize the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war.

" (h) To declare abolished, suspended or inadmissible in a Court of law the rights and actions of the nationals of the hostile party."

Art. 25 declares that " it is prohibited to attack or bombard by any means whatsoever, cities, villages or buildings which are undefended." [31]

**The Prisoners and the Wounded.**

Until the nineteenth century the obligation to minister to the needs of the wounded was not fully recognised. In 1864 the Geneva Convention was framed which imposed on belligerents the duty of providing effective means for the protection of the wounded and sick on land. Hospitals and their staffs were neutralised and protected if bearing the Red Cross.

A new convention was signed at Geneva in 1906 which provided that the wounded and sick on either side are to be respected and taken care of without distinction of nationality, though the enemy wounded may be held as prisoners of war. After each engagement, the commanders must take measures to protect the wounded and dead against maltreatment and pillage. Each belligerent is required to notify to the other the names and subsequent *disposal or fate of the wounded and sick left in his hands*, and to return the private property of those who may die. The mobile sanitary units and their staffs, including doctors and chaplains, are to be respected and protected under all circumstances. The Red Cross is adopted as the official device.

The Hague Convention IV, 1907, provides that prisoners of war are to be humanely treated and must be maintained on the same footing as regards food, clothing and quarters as the captor's own forces. They may be required to work but their tasks must not be excessive, or connected with the operations of war. They are subject to the military laws in force in the captor's State. They may be released on parole. When persons who follow an army without belonging to it, such as newspaper correspondents, sutlers, and contractors, are captured, they are, if detained at all, entitled to be treated as prisoners of war, subject to their possessing a certificate from the military authorities of the army which they were accompanying. Each of the belligerents is to establish a bureau of information for the

purpose of supplying information concerning the prisoners and to collect their valuables and personal effects, and to forward them to those interested. Prisoners are to enjoy complete liberty of worship.

In 1916, agreements were concluded between Germany and the Allies for the repatriation of permanently disabled prisoners.

[32] Germany did not observe this regulation during the Great War and she imposed collective punishment in several cases. (Pitt Cobbett's L. C., vol. 2, p. 170.)

# BELLIGERENT OCCUPATION.

The Hague Convention of 1907, Art. 42, declares that territory is deemed to be occupied only when it is actually placed under the authority of the invader, and that such occupation applies only when supported by a force sufficient to maintain the authority of the occupant. Occupation ends when the force proves ineffective to maintain that authority.

A mere proclamation, therefore, will not effect a valid occupation.

Occupation gives the occupant the right to govern. Art. 43 enacts that the occupant "shall take all steps in his power to re-establish and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country." The occupant may exact an oath from the inhabitants to obey his legitimate commands ("an oath of neutrality").

The non-combatant inhabitants may be forced to perform any service of a non-military character, though they are not liable to perform military services against their own country (Art. 52). Under penalty of death, non-combatants are prohibited from hostile operations against the occupant, such as giving information to the enemy or destroying roads and telegraphs.

Art. 50 enacted that "no general penalty, pecuniary or otherwise, may be inflicted on the population on account of the acts of individuals for which it cannot be regarded as collectively responsible." In practice, this rule does not prevent reprisals by an occupying belligerent for hostile acts committed by a few individuals.[32]

The occupying authorities may also use the resources of the country. Immovable property may be taken possession of, cash and realisable securities may be appropriated, and such other property as may be useful for military activities. Pillage of private property is forbidden. Private land and buildings may be occupied by the invader in cases of military necessity. The invader may also use neutral property found in the occupied territory subject to the payment of proper compensation.

The occupant may collect *taxes* but may not impose new taxes. He must also defray the expenses of administration.

The invader may levy *contributions*, which are sums of money over and above the ordinary taxes; these may be imposed legitimately only for the needs of the enemy and the expenses of administration.

*Requisitions* may also be made: they are demands for articles and services needed by the army of occupation.

*Fines* are sometimes levied by the invader as penalties for offences committed against the invaders.

[33] This Convention was not strictly binding during the Great War since not all the belligerents were parties to it. Its spirit was completely ignored by the Germans who bombarded undefended coastal places without warning on several occasions.

# MARITIME WARFARE.

**Methods.**

As in land warfare, certain practices are forbidden both by custom and convention.

**Bombardment.**

Prior to The Hague Conference of 1907 there was a divergence of opinion as to whether an undefended coast town might be legitimately bombarded.

By Convention XI, Art. 1, it was enacted that "the bombardment of undefended ports, towns, villages, dwellings, or other buildings by naval forces is under all circumstances and conditions prohibited." Moreover, "a place cannot be bombarded solely because automatic contact mines are anchored off the harbour."

The latter provision was not, however, accepted by Great Britain, France, Germany and Japan.

Art. 2 provides that, even in the case of undefended places, military or naval establishments, depots of arms or war material, workshops or plant capable of hostile use, and men-of-war in harbour may be bombarded, if after due notice the local authorities fail to destroy them.

Art. 3 enacts that undefended places may be bombarded if the authorities do not accede to demands for requisitions, which must, however, be in proportion to the resources of the place.

Art. 4 prohibits the bombardment of undefended places for the non-payment of money contributions.

Art. 5 provides that in all bombardments by naval forces, certain buildings bearing a distinctive mark and not used for military purposes should be spared, such as buildings devoted to public worship, art, science or charitable purposes, and hospitals.

Art. 6 enacts that unless military exigencies render it impossible, notice of an impending bombardment must be given to the authorities.

Art. 7 enacts that the giving over to pillage of a town or place, even when taken by assault, is forbidden.[33]

[34] The inadequacy of this Convention was exposed during the Great War when the indiscriminate sowing of mines resulted in great damage to neutral vessels.

[35] Privateering in its original form has disappeared, but many States have subsequently enlisted privately-owned vessels in their service. France, Germany, Italy, Great Britain, have all concluded arrangements at different times with prominent steamship companies. The latter were granted subsidies, in return for which the Government took over certain vessels in time of war for maritime use.

These arrangements are perfectly legitimate if the vessels are under the *direct control* of the State.

**Stratagems.**

The use of ordinary ruses to deceive the enemy is permissible, though this excludes all forms of treachery such as falsely flying flags of truce and the treacherous use of Geneva flags.

**Submarine Mines.**

The serious danger to neutral shipping due to the use of mechanical mines during the Russo-Japanese War of 1904 led to the enactment of Convention VIII at The Hague Conference, 1907. This prohibits—

(1) the laying of unanchored contact mines unless so constructed as to become harmless within one hour after control of them has ceased;

(2) the laying of anchored contact mines that do not become harmless on getting loose from their moorings;

(3) the use of torpedoes that do not become harmless after missing their mark;

(4) the laying of contact mines off the coasts and ports of the enemy, with the sole object of intercepting commercial navigation.

Art. 8 enacts that when anchored contact mines are used, every precaution must be taken for the security of peaceful navigation as far as possible, and belligerents must do their utmost to render such mines harmless within a limited time.

At the close of the war, each Power was to remove its own mines.[34]

Art. 22 of the Oxford Manual of Naval War declares that "a belligerent may not lay mines along the coast or harbours of his adversary except for naval and military ends. He is forbidden to lay them in order to establish or to maintain a commercial blockade."

**Privateers.**

These were vessels belonging to private owners which in time of war received a commission from the State authorising them to capture enemy vessels and property. The Declaration of Paris, 1856, declared that "privateering is and remains abolished."[35]

**Converted Merchant Ships.**

Convention VII, 1907, provided that no vessel can acquire the status and rights of a warship unless she is placed under the direct authority and immediate control

and responsibility of the Power whose flag she flies; that she bears the external marks distinguishing warships belonging to her nationality and that the conversion must be publicly notified as soon as possible.

The *place* of conversion was not provided for by either The Hague Convention or the Naval Conference, 1908-9. The Anglo-American view is that conversion is illegal unless made in the ports and territorial waters of the belligerent Power or an ally.

Germany takes the view that her merchantmen may be converted on the high seas.

**The Wounded, Sick and Shipwrecked.**

The Geneva Convention principles were applied to maritime warfare by The Hague Convention of 1899, which was itself subsequently revised by Hague Convention X, 1907. This provides that wounded and sick sailors are to be respected and cared for by the captors, whilst after an engagement a belligerent is required to fulfil the same duties as in war on land. Wounded, sick and shipwrecked persons who may be captured become prisoners of war, and the surrender of those found on hospital ships may be demanded. Hospital ships (which must be painted white and fly the Geneva flag) are exempt from capture and attack; they must afford relief without distinction of nationality; they must not be used for military purposes and they are subject to search, and, in cases of grave necessity, detention by the opposing belligerent. Neutral merchantmen may receive the sick and wounded and are free from liability. Neutral warships may take the wounded on board, though every precaution must be taken to prevent them from taking any further part in the war.

[36] On the outbreak of the Crimean War, Great Britain, France and Russia allowed enemy merchantmen to depart within a fixed period.

In the Austro-Prussian War in 1866, Prussia gave enemy vessels six weeks' grace.

This principle was embodied in Hague Convention VI, 1907, which, however, did not generally apply during the Great War since some of the belligerents had not ratified it.

[37] These rules were severely infringed during the Great War.

[38] This Convention was not binding during the Great War and its spirit was completely ignored. The mails of of belligerents and neutrals were alike opened and examined, and all contraband articles were seized.

# MARITIME CAPTURE.

Maritime capture is properly complete when the captor takes effective possession with intent to retain: actual physical possession is usual though not essential; there may be constructive possession, as when a vessel is under the control of the captor and obeys directions and orders.

The main difference between land and sea warfare is that in the latter private property is liable to capture. This applies to enemy vessels, to all goods of the enemy found afloat unless protected by the neutral flag, and to neutral goods and ships employed in unneutral service.

## *RESTRICTIONS ON MARITIME CAPTURE.*

### 1. Enemy Merchantmen.

About the middle of the nineteenth century a new practice arose of permitting enemy merchant vessels, whether in, or on their way to, the national ports to depart within a time fixed by proclamation and to return to some port of their own country, provided that they were unarmed and had no contraband on board.[36]

This immunity does not extend to merchantmen so built as to be easily convertible into warships.

**2. Enemy property, not being contraband,** found on board neutral vessels is exempt from capture.

The Declaration of Paris, 1856, enacts that the neutral flag covers enemy goods, with the exception of contraband of war; and, by Art. 8, neutral goods, with the exception of contraband of war, shall not be liable to seizure under the enemy flag.[37]

Hague Convention XI, 1907, prohibited the capture of the mails of neutrals or belligerents, whether official or private, which might be found on board a neutral or enemy vessel at sea.[38]

### 3. Fishing Boats.

Coastal fishing vessels and their crews and vessels engaged in scientific missions are exempt from capture if they are unarmed and engaged in the pursuit of their peaceful calling. This immunity does not extend to vessels employed in fishing on the high seas.

**4. Cartel Ships.**

Enemy vessels engaged in the exchange of prisoners are exempt from capture; such immunity is lost, however, if they engage in mercantile traffic.

**5. Hospital Ships.**

Such vessels employed in accordance with the provisions of The Hague Conventions are exempt from capture. This immunity is, of course, forfeited if the ships are employed for any military purpose.

[39] According to English Admiralty law, "prize" extends to all property captured *jure belli* on the sea or in foreign ports or harbours; or captured on land by naval forces acting alone or jointly with land forces; money received by way of ransom; property captured in the rivers, ports or harbours of the captor's country.

[40] Prize Courts in fact do administer International Law, though the German Prize Courts have always insisted that they apply municipal law.

[41] In 1871, a commission was appointed to investigate several claims as the result of the alleged unjust condemnation of British vessels by the American Prize Courts during the Civil War.

# PRIZE COURTS.

[39] Prize Courts are established in civilised belligerent States for the purpose of investigating cases of maritime capture, and to condemn property as lawful prize or award restitution and compensation. These Courts adjudicate on property belonging to both belligerents and neutrals.

These Courts are national tribunals, though they administer rules which may be based on International Law.[40] They are not bound by an Order in Council which is contrary to International Law. They are open to all persons, regardless of nationality.

Prize Courts may not be established by a belligerent in neutral territory, though they may sit in the territory of an ally. Neutral Courts may exercise prize jurisdiction where the prize was taken in violation of the neutrality of the national territory, and where the prize was captured and abandoned and is the subject of a salvage claim by the neutral Power.

The decision of the Courts is final, though the territorial State is internationally responsible; thus neutral States may claim satisfaction if aggrieved by the decision.[41]

# THE PEACE TREATY.

Wars are usually terminated by the conclusion of peace treaties. The main effect of a treaty is the cessation of hostilities; martial law ceases to apply, the civil population resumes its former status, prisoners of war are released and diplomatic intercourse is resumed.

As to territory, in the absence of express stipulations the principle of *uti possidetis* applies, each State preserving the territory under its control at the termination of the war.

Rights to private property are restored in the absence of express stipulations; this does not, however, apply to property already legitimately confiscated.

[42] Oppenheim, vol. 2, pp. 369—371.

# AIR WARFARE.

The Convention for the Regulation of Aerial Navigation, 1919, recognises the sovereignty in each State over the air-space above its territorial land and water, subject to the freedom of innocent passage in time of peace.

The general principles laid down by The Hague Regulations as to explosives, bombardments, etc., were almost the only restrictions on air warfare in 1914. Aircraft were used freely in the World War and many of the principles were infringed.

The Institute of International Law at Madrid in 1911 laid down the principle that "Aerial war is allowed provided that it does not present for the person or property of the peaceable population greater dangers than land or sea warfare."

The Committee on Aircraft to the Washington Conference enunciated in 1923 various provisions of a proposed code of Air Warfare Rules.[42]

# NEUTRALITY.

Neutrality is the condition of those States which in time of war abstain from all interference in the war and act impartially towards each of the belligerents. States sometimes conclude agreements of reciprocal neutrality by virtue of which when one becomes a belligerent the other is pledged to remain neutral.

The law of neutrality is based partly on custom and partly on Convention. Hague Convention V, 1907, is concerned with "the Rights and Duties of Neutral Powers and Persons in War on Land." This has been ratified by forty-two Powers, but not by Great Britain, who entered a reservation against Arts. 16, 17 and 18.

Hague Convention XIII, 1907, is concerned with "the Rights and Duties of Neutral Powers in Maritime War"; it has not been ratified by U.S.A. and Great Britain.

The Declaration of London, 1909, treats of the question of neutral trade, and contains rules with respect to blockade, contraband, unneutral service, the destruction of neutral prizes, transfers to the neutral flag, the right of convoy, and compensation for unlawful seizure. Though the Declaration is unratified, it was adopted on the outbreak of the Great War by all the Great Powers subject to modifications.

Under the present system, there is no distinction between the various grades and kinds of neutrality. The condition or relation of neutrality is not legally subject to qualification.

Hague Convention III, 1907 (Art. 2), provides that the existence of a state of war ought to be notified to neutrals without delay, and shall not take effect in regard to them until after the receipt of a notification, although this may be given by telegraph, subject to the proviso that absence of notification shall not avail if it can be proved beyond question that the neutral was aware of the existence of a state of war.

The mere violation of neutrality does not terminate neutrality. Neutrality ends with the conclusion of the war or through the outbreak of war between the belligerent and the hitherto neutral Power.

[43] *The Twee Gebroeder* (1800). (Pitt Cobbett's L. C., vol. 2, p. 408.) During the Anglo-Dutch war, some Dutch ships were captured by boats sent out from a British warship lying within the territorial waters of Prussia. The latter asked for restitution.

Lord Stowell held that the act constituted a violation of neutral territory (though damages were not given against the British in this case as the situation was dubious and the violation unintentional).

Hague Conventions V and XIII define certain of the rights and obligations relative to the integrity of neutral territory.

# THE RIGHTS OF NEUTRAL STATES.

**(1) The Inviolability of Neutral Territory.**

The use of neutral territory for the purposes of war is prohibited.[43] This restriction applies not only to the actual conduct of hostilities and the making of captures on neutral territory and in territorial waters, but also to the preparation of acts of war such as the fitting out of expeditions.

**(2) The Right to Make Municipal Regulations.**

A neutral State is entitled to impose impartial restrictions on the belligerents in order to ensure the observance of its neutrality. Such regulations usually concern such matters as the internment of belligerents driven across the frontier, the furnishing of supplies and the admission of warships and prizes.

**(3) The Right of Freedom of Intercourse.**

A neutral State is entitled to maintain its diplomatic intercourse with other States including the belligerents.

**(4) The Right to be Compensated** for violations of its neutrality.

**The Right of Angary.**

Under the modern system this is the right of belligerents to destroy or requisition in case of extreme military necessity, neutral property within their control.

This right is absolutely subject to compensation being paid, and it was generally exercised during the Great War.

[44] Great Britain has passed legislation to ensure the observance of its neutrality. The Foreign Enlistment Act, 1819, was replaced by the Foreign Enlistment Act, 1870.

The United States passed a Neutrality Act in 1794 which was replaced by the Neutrality Act, 1818.

# THE DUTIES OF NEUTRAL STATES.

**1. Impartiality.**

All neutral powers with respect to belligerents must be exercised with absolute impartiality.

**2. Abstention.**

Neutral States may not furnish military assistance to either belligerent. They may not supply belligerents with any war material. A neutral State, however, is "not bound to prevent the export from or transit through its territory, on behalf of either belligerent, of arms or munitions of war, or other articles of use to a fleet or army" (Hague Convention V, 1907, Art. 7).

A neutral *State* must not lend money to, or guarantee any loan on behalf of, either belligerent. According to current usage there is, however, no breach of neutral duty if neutral *subjects* grant loans to belligerents if made purely as commercial transactions.

**3. Duty not to permit neutral territory to be used as a base of hostile operations.**

**(a) Land Forces.**

The practice has steadily grown since the eighteenth century of prohibiting a neutral State from levying troops within its territory.

Hague Convention V, 1907, Arts. 4 and 5, specifically declare that corps of combatants must not be formed, nor recruiting offices opened on the territory of a neutral Power, in the interests of the belligerents, and that neutral Powers must prohibit this.

Art. 6 declares that "the responsibility of a neutral Power is not involved by the mere fact that persons cross the frontier individually in order to offer their services to one of the belligerents."

A neutral State is bound to prevent the organisation within its jurisdiction of hostile expeditions against friendly Powers.[44]

Hague Convention V, 1907, Art. 2, prohibits belligerents from moving across the territory of a neutral Power either troops or convoys, whether of munitions of war or supplies.

However, Art. 14 permits a neutral State to authorise the passage over its territory of the wounded or sick belonging to either belligerent on condition that the trains transporting them shall carry neither combatants nor war material.

This Convention also regulated the conditions of *asylum* in neutral territory.

Art. 11 provides that the neutral State shall intern fugitive troops if possible at a distance from the theatre of war; officers may, in suitable cases, be left at liberty if they give their parole not to leave the territory without permission.

Art. 12 requires the neutral to feed and clothe them subject to compensation after the war by their Government.

Art. 13 provides that the neutral Power must leave fugitive prisoners of war at liberty, though should they remain in the territory, the neutral may prescribe their place of residence.

### (b) Belligerent Aircraft.

The practice with regard to belligerent aircraft is indicated by the proposed Air Warfare Rules of 1923.

Art. 40 declares that "belligerent military aircraft are forbidden to enter the jurisdiction of a neutral State."

Art. 49 declares that "a neutral Government must use the means at its disposal to prevent the entry within its jurisdiction of belligerent military aircraft, and to compel them to alight if they have entered such jurisdiction. A neutral Government shall use the means at its disposal to intern any belligerent military aircraft which is within its jurisdiction after having alighted for any reason whatever, together with its crew and the passengers, if any.

Art. 48 provides that "the personnel of a disabled belligerent military aircraft rescued outside neutral waters and brought into the jurisdiction of a neutral State by a neutral military aircraft and there landed, shall be interned."

### (c) Maritime Forces.

Hague Convention XIII, 1907, embodying the principles of the Treaty of Washington, 1871, provides that belligerents are prohibited from using neutral ports and

waters as a base of operations against the enemy, and neutral States are required to exercise due vigilance to prevent any violation of this rule.

Art. 10, however, recognises that a neutral State may allow belligerent warships or prizes to pass through its territorial waters without violating its neutrality.

Art. 5 prohibits a belligerent from erecting in neutral ports and waters any wireless telegraphy station to serve as a means of communication with the belligerent forces on land or sea.

Neutral ports or waters may not be used as a starting-point for belligerent operations. Thus, neutral Powers must prevent belligerent warships from lying in wait in territorial waters for the purpose of capturing the enemy.

Belligerent warships, however, may be admitted into neutral ports.

Hague Convention XIII, 1907, Art. 5, enacts that, in the absence of any contrary intention by the neutral Power, no belligerent may have more than three warships in one of the ports or roadsteads of that Power simultaneously.

Art. 16 provides :

(1) That when warships belonging to both belligerents are present simultaneously in a neutral port or roadstead, a period of not less than twenty-four hours must elapse between the departure of a vessel belonging to one belligerent and the departure of a vessel belonging to the other.

(2) That the order of departure shall be determined by the order of arrival, unless the vessel that arrived first is so circumstanced that an extension of stay is permissible.

(3) That a belligerent warship shall not leave a neutral port or roadstead until twenty-four hours after the departure of a merchant ship flying the flag of its adversary. This rule was generally adopted during the Great War.

A neutral may not allow belligerent warships in neutral ports to carry out such repairs as would add to their fighting force (Art. 17).

With respect to the quantity of coal and provisions permissible, Arts. 19 and 20 provide that belligerent warships may only revictual in neutral ports or roadsteads to bring up their supplies to the peace standard. Similarly, these vessels may only ship sufficient coal to enable them to reach the nearest port of their own country. They may, on the other hand, fill up their bunkers built to carry fuel, in those cases where the neutral countries have adopted this method of determining the amount of fuel to be supplied.

[45] This Article has been severely criticised, and Great Britain, Japan and U.S.A. all entered a reservation against it.

If, in accordance with the law of the neutral Power, the ships are not supplied with coal within twenty-four hours of their arrival, the duration of their permitted stay is extended by twenty-four hours. Belligerent warships which have shipped fuel in a port belonging to a neutral Power may not, within the succeeding three months, replenish their supply in a port of the same Power.

Belligerent prizes may only be admitted into neutral ports on account of unseaworthiness, stress of weather, or lack or food or fuel and must leave as soon as this justification is at an end (Art. 21).

Art. 23 permits a neutral State to allow prizes to be deposited in its ports pending the decision of a Prize Court.[45]

On the refusal of a belligerent warship to leave a port where it has no right to remain, the neutral State may take such measures as it considers necessary to render the ship incapable of going to sea during the war (Art. 24).

The wounded, sick or shipwrecked may be taken on board neutral vessels, though reasonable precautions must be taken that they take no further part in the operations of the war.

[46] In 1756, during the Anglo-French War, France, finding her colonial trade restricted owing to British maritime superiority, allowed the Dutch, who had remained neutral, to carry on that trade. The British Government ordered the Dutch vessels to be seized and condemned. The Courts also declared that such trade was illegal.

Practice has varied in the matter. Britain, America and Japan adopted the principle, though, in the case of *The Thea*, the Russian Prize Court rejected it.

[47] Arts. 2 and 3, Declaration of Paris, 1856.

The Declaration has been acceded to by all the Great Powers except the United States who, however, observed its provisions during the Spanish-American War of 1898. The rules were grossly infringed during the Great War.

# NEUTRAL COMMERCE.

The general principle is that the neutral maintains the right of trading with either belligerent unless such trading is calculated to prejudice the conduct of hostilities by either belligerent. The neutral is itself under no obligation to prohibit such acts on the part of its subjects. It is the right of each belligerent to visit and search neutral vessels and their cargoes and to detain them if there is reasonable suspicion of carrying contraband, intending to violate blockade or engaging in acts of hostile or unneutral service, or to confiscate them on proof of guilt.

Under a practice known as the "*Rule of 1756*" belligerents claimed that the commerce of neutrals should in time of war be restricted to its limits in time of peace.[46]

It is a general rule that neutral goods, not being contraband, found on board an enemy vessel are exempt from condemnation and that the neutral flag shall cover enemy goods with the exception of contraband of war.[47] This is the maxim "*free ships, free goods.*"

[48] Arts. 1—21 of the Declaration of London, 1909, provide a code of rules respecting blockade.

Although the Declaration is unratified it was adopted by the belligerents during the Turco-Italian War, 1911, and, subject to modifications, during the Great War.

# BLOCKADE.

Blockade is an act of war consisting in the closing of access to the coasts of the enemy by blocking the approach and intercepting all intercourse.

**Military Blockades** are undertaken as incident to some military operation proceeding on land.

**Commercial Blockades** aim at weakening the enemy by cutting off his commerce with the area blockaded.

**Validity of Blockades.**[48]

(1) The blockade must be duly established under the authority of the belligerent Government.

(2) The blockade must be duly effective as distinct from a fictitious or "paper blockade." Art. 4 of the Declaration of Paris, 1856, provided that "blockades, in order to be binding, must be effective, that is, maintained by a force sufficient really to prevent access to the coasts of the enemy." According to the British view the force must be sufficient to expose any vessel attempting to enter to obvious danger of capture, even though some vessels successfully contrive to get through.

(3) The blockade must be *continuously* maintained, so that its validity will be impaired if the blockading fleet is not maintained efficiently or if it is driven off by superior force. The blockade will not be interrupted by the temporary absence of the blockading force owing to bad weather.

(4) The blockading force must enforce the blockade impartially against all vessels.

(5) Notification is essential to the commencement of blockade. The practice has varied greatly as to the nature of the notice required. It has been usual for the commander of the blockading force to address a notification to the local authorities of the place blockaded and to the consular offices there. The blockading Government also notifies neutral Governments or their diplomatic representatives. It is presumed if the notification was duly issued that the neutral Government has communicated such notice to its

subjects. According to French and Italian practice a special notification is necessary to approaching neutral vessels. According to the British view, however, the notice to vessels may be either actual or presumptive.

**Cessation of Blockade.**

(1) It may be effected by the voluntary raising of blockade by the blockading Power, though neutrals ought to be notified of the fact.

(2) A blockade may end by its ceasing to be effectively maintained, *e.g.*, by the blockading force being driven away by the enemy; it cannot subsequently be enforced again until it has been formally re-established.

(3) A blockade may end by the occupation of the blockaded area by the blockading Power. There is, however, a divergence of opinion on this point between American and British Courts.

**Breach of Blockade.**

The conditions of neutral liability for breach of blockade are—

(1) A valid and effective blockade.

(2) Notice on the part of the neutral. Notice is presumed to have been given when sufficient time has elapsed after the home State of a vessel has been notified to inform all vessels sailing under its flag.

(3) Some act of violation, whether by ingress or egress. A vessel with notice of the blockade is guilty of breach if she enters or attempts to enter the blockaded area except, of course, in cases of necessity.

Neutral vessels in port at the commencement of blockade are freely allowed to come out in ballast or with cargo *bona fide* laden before blockade within a limited period. Fifteen days was adopted by Great Britain and France as the limit.

Egress or attempted egress after time is a breach of blockade.

A blockade-running vessel may only be captured during the breach or attempted breach. Practice has varied on the point. Art. 20 of the unratified Declaration of London provides that when a vessel has broken blockade outwards, or has attempted to break blockade inwards, she will be liable to capture so long as she is pursued by a ship of the blockading force, although if the pursuit is meanwhile raised, her liability to capture will cease. Mere refuge in

a neutral port does not exempt a vessel from capture, for the pursuer may continue to lie in wait for her. If the pursuit is abandoned or if she gains a home port then she cannot be captured.

After capture, the blockade-runner is brought before a Prize Court for adjudication. The crew may be detained as witnesses though not as prisoners of war. The penalty is confiscation of the vessel and the cargo.

Art. 21 of the unratified Declaration of London provides that where the vessel is condemned, her cargo is also condemned unless it be proved that at the time of the shipment of the goods the shipper neither knew, nor could have known, of the existence of the blockade.

# CONTRABAND.

Contraband is property which has a hostile destination and is of a character capable of assisting the enemy in war.

**Absolute** contraband is a term applied to goods of such a character as to be primarily used for the purposes of war, *e.g.*, arms, ammunition, etc.

**Conditional** contraband is property capable of being used for purposes of war as well as of peace, *e.g.*, food, money and horses.

The practice of States with regard to this distinction has been very varied.

Art. 30 of the unratified Declaration of London provides that absolute contraband is liable to capture if destined either to territory belonging to or occupied by the enemy, or to the armed forces of the enemy, and this whether directly or by transhipment, or by subsequent land transport.

Art. 33 provides that conditional contraband is liable to capture only if destined either for the armed forces or a government department of the enemy State. Such a destination is *presumed* if the articles were consigned—

(a) to enemy officials;

(b) to a contractor in the enemy country who as a matter of common knowledge supplied articles of this kind to the enemy;

(c) to a fortified place of the enemy or to any other place serving as a base of operations.

The Declaration of London enumerated various contraband articles. During the Great War, however, the list of absolute contraband was rejected and the number of articles of contraband was greatly increased.

In order to render neutrals liable for carrying contraband it must be proved that they have notice of the war and notice of the contraband character of the goods carried.

If a vessel is bound for a neutral port its goods are nevertheless contraband if it can be shown that their ultimate destination is the enemy country, whether the goods are to be carried direct to the enemy or in a subse-

quent transhipment or land journey. This is known as the "doctrine of continuous voyage."

This doctrine applies to Absolute Contraband, but not to Conditional Contraband except when the enemy has no seaboard.

**The Penalty for Carrying Contraband.**

A vessel carrying contraband may be seized by the belligerent, though she may not be seized if the carriage is at an end, or if she is on her return voyage. The Declaration of London established the general rule that all neutral captured vessels must be taken into a port of a Prize Court except, in certain circumstances, where the contraband cargo is handed over to the captor.

Contraband is liable to condemnation as prize, though practice varies as to the liability of the carrying vessel. Art. 40 of the Declaration of London declares that the carrying vessel may be confiscated if the contraband, reckoned either by value, weight, volume, or freight, forms more than half the cargo. The carrying vessel is liable to confiscation though the owner was unaware that she was carrying contraband. Innocent cargo on board belonging to the owner of the contraband is liable to condemnation, though innocent cargo which is the property of other owners will be restored.

# UNNEUTRAL SERVICE.

The unratified Declaration of London, 1909, embodying current international usage, classified the forms of unneutral service and the penalties attaching thereto. These rules were adopted during the War until 1916, when they were no longer applied.

According to the Declaration the forms of unneutral service may be generally divided into two main groups :—

**A.—The Less Grave Forms.**

(1) The *specially* undertaken transport of individual persons who are embodied in the armed forces of the enemy.

(2) The *specially* undertaken transmission of intelligence in the interest of the enemy.

(3) The transport of a military detachment of the enemy to the knowledge of the owner, the charterer, or the master.

(4) Similarly the transport of a person or persons who during the voyage directly render assistance to the enemy, *e.g.*, by signalling.

In these cases the vessel is to be treated like a neutral vessel engaged in the carriage of contraband. She is liable to seizure and, on proof of guilt, to condemnation. Her flag covers enemy goods on board and her liability ends with the completion of the unneutral service.

**B.—The Graver Forms.**

(1) The direct participation in hostilities.

(2) The subjection of a neutral vessel to the control of an agent placed on board by the enemy Government.

(3) The *exclusive* employment of a neutral vessel by the enemy Government.

(4) The *exclusive* engagement of a neutral vessel in transporting enemy troops or transmitting intelligence in the interest of the enemy.

Since in these cases the services performed are exclusive and not specific the vessel is submitted to the same penalties as an enemy merchantman. Thus she is liable to condemnation and the goods on board will be deemed to be enemy property.

**Enemy Persons On Neutral Vessels.**

The general opinion before the Declaration of London, 1909, was that belligerent warships could only seize enemy persons if the vessel was itself seized at the time. Art. 47, however, provided that any individual embodied in the armed forces of the enemy found on board a neutral vessel might be taken off and made a prisoner of war, although there might be no ground for the capture of the vessel.

Apart from this rule, however, belligerents frequently seize enemy persons by way of reprisal or as a matter of self-defence and strict military necessity. During the Great War, many enemy subjects liable to military service were seized on neutral vessels and made prisoners of war.

# NEUTRAL VESSELS AND MARITIME CAPTURE.

Belligerents may visit and search *neutral merchantmen* on the high seas in order to ascertain whether the neutral is performing unneutral service or rendering assistance to the enemy in other ways. Forcible resistance to visit and search by a qualified belligerent involves the condemnation of the vessel unless the captor has grossly exceeded her powers: a mere attempt to escape, however, does not involve condemnation.

**The Right of Convoy.**

Neutral warships are not subject to visit and search and, in accordance with established practice, neutral merchantmen under the convoy of their warships are exempt from search.

The Declaration of London, 1909, provides certain conditions.

At the request of the commander of a belligerent cruiser, the commander of the convoy must give in writing all information which could be obtained by search, both as to the character of the vessels and their cargoes. If the belligerent suspects that the confidence of the neutral commander had been abused he may ask for further investigation. The commander of the convoy is then to investigate and send a written report to the commander of the belligerent cruiser. The latter may then, if he thinks fit, capture the vessel under the convoy. In the event of a disgreement between the two officers, the matter is referred to their Governments and settled by diplomacy.

[49] During the Great War Germany sank many neutral vessels without providing for the safety of those on board.

# DESTRUCTION OF NEUTRAL PRIZES.

The question whether the destruction of a neutral ship is justifiable in cases of absolute military necessity and other exceptional circumstances has been greatly disputed.

The unratified Declaration of London, 1909, prohibited the destruction of neutral vessels; they "must be taken into such port as is proper for the determination there of all questions concerning the validity of the prize."

Arts. 50—51, however, provide that neutral vessels may be destroyed if the safety of the captor is involved or there is exceptional military necessity; moreover, all persons on board must be placed in safety and the ship's papers must be taken on board the warship.[49]

In the Treaty of Washington, 1922, between U.S.A., the British Empire, France, Italy and Japan, it was declared that :—

(1) "A merchantman must be ordered to submit to visit and search to determine its character before it can be seized. A merchantman must not be attacked unless it refuses to submit to visit and search after warning or to proceed as directed after seizure. A merchantman must not be destroyed unless the crew and passengers have been first placed in safety.

(2) Belligerent submarines are not under any circumstances exempt from the universal rules above stated, and if a submarine cannot capture a merchant vessel in conformity with these rules the existing law of nations requires it to desist from attack and from seizure and to permit the merchant vessel to proceed unmolested."

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**LIST D.** *May, 1933.*

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**WILLIAMS' Epitome of Railway Law.** Part I. The Carriage of Goods. Part II. The Carriage of Passengers. By E. E. G. WILLIAMS, Barrister-at-Law. Second Edition. 231 pages. Price 10s. net. 1921

A useful book for the Bar and Railway Examinations.

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**GARSIA'S Law relating to the Carriage of Goods by Sea in a Nutshell.** As amended by the Carriage of Goods by Sea Act, 1924. Second Edition. By MARSTON GARSIA, Barrister-at-Law. 36 pages. Price 3s. net. 1925

Written with special reference to Bar Examinations.

## COMMON LAW.

(See also Broom's Legal Maxims, p. 23, *post*).

**ODGERS on the Common Law of England.** Third Edition. By ROLAND BURROWS, LL.D., Reader in the Inns of Court. 2 vols. 1,521 pages. Price £2 10s. net. 1927

Odgers on the Common Law deals with Contracts, Torts, Criminal Law and Procedure, Civil Procedure, the Courts, and the Law of Persons.

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**WILSHERE'S INDERMAUR'S Principles of the Common Law.** The Law of Contracts and Torts, with a Short Outline of the Law of Evidence. Re-written and enlarged by A. M. WILSHERE, Barrister-at-Law. Third Edition. 816 pages. Price £1 10s. net. 1932

"It is clear in statement and makes as easy reading as the nature of the subject permits. The selection of matter to be treated is good—exactly the right emphasis is laid on fundamental principles, and they are presented with an accuracy of statement not always to be found in law books. . . . Painstaking labour is evident in every page, and the result is the student may read and the practitioner consult this book with confidence that his efforts will be repaid."—*Law Notes.*

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**INDERMAUR'S Leading Common Law Cases;** with some short notes thereon. Chiefly intended as a Guide to "SMITH'S LEADING CASES." Tenth Edition. by E. A. JELF, Master of the Supreme Court. With six illustrations by E. T. REED. 111 pages. Price 8s. 6d. net. 1922

The editor has introduced several new features with a view to assisting the student in remembering the principles of law dealt with, but the unique feature of the edition is the addition of six illustrations by Mr. E. T. Reed. After seeing these illustrations of the bull in the ironmonger's shop, the chimney-sweep and the jeweller, the six carpenters in the tavern, etc., you will find it easy to remember the cases and what points they decided. Every wise student reads this book.

**COCKLE & HIBBERT'S Leading Cases in Common Law.** With Notes, Explanatory and Connective, presenting a Systematic View of the whole Subject. By E. COCKLE and W. NEMBHARD HIBBERT, LL.D., Barristers-at-Law. Second Edition. 962 pages. Price £2 2s. net. 1929

This book is on the same lines as Cockle's Cases on Evidence. It contains 771 cases.

Following is a short summary of its contents:—

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|---|---|---|
| **Nature of the Common Law.** | **Void, etc., Contracts.** | **Negotiable Instruments.** |
| **Common Law Rights and Duties.** | **Quasi-Contracts.** | **Partnership.** |
| **Contract, including Contracts of Record.** | **Agency.** | **Sale of Goods.** |
| **Specialty Contracts.** | **Bailments.** | **Torts.** |
| **Simple Contracts.** | **Carriers.** | **Damages.** |
| | **Landlord and Tenant.** | **Law of Persons.** |
| | **Master and Servant.** | **Conflict of Laws.** |

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"The present work has the merits of thoroughness, accuracy, systematic arrangement and a modern point of view."—*Solicitors' Journal.*

**SMITH'S Leading Cases.** A Selection of Leading Cases in various Branches of the Law, with Notes. Thirteenth Edition. By Sir T. WILLES CHITTY, K.C., A. T. DENNING and C. P. HARVEY, Barristers-at-Law. 2 vols. Price £4 10s. net. 1929

This work presents a number of cases illustrating and explaining the leading principles of the common law, accompanied by exhaustive notes showing how those principles have been applied in subsequent cases.

## COMPANIES.

**The Articled Clerk's Cram Book.** See page 19.

**CHARLESWORTH'S Principles of Company Law.** Illustrated by Leading Cases. By J. CHARLESWORTH, Barrister-at-Law. 283 pages. Price 7s. 6d. net. 1932

"It would be difficult to recommend to a student a clearer and more helpful book on the Law of Companies."—*Law Times.*

**SMITH'S Summary of the Law of Companies.** Fourteenth Edition, by W. HIGGINS, Barrister-at-Law. 325 pages. Price 7s. 6d. net. 1929

"No other elementary text-book contains the same amount of detail, and for examination purposes it is probably unsurpassed."—*Annual Survey of English Law, 1929.*

**BALFOUR'S Company Law in a Nutshell.** By J. A. Balfour, Barrister-at-Law. 88 pages. Price 3s. 6d. net. 1933

**SOPHIAN'S Companies Act, 1929,** with Introduction, Notes and Index. 266 pages. Price 10s. 6d. net. 1929

## CONFLICT OF LAWS.

**The Articled Clerk's Cram Book.** See page 19.

**WESTLAKE'S Treatise on Private International Law,** with Principal Reference to its Practice in England. Seventh Edition. By NORMAN BENTWICH, Barrister-at-Law. 436 pages. Price £1 7s. 6d. net. 1925

**FOOTE'S Private International Law.** Based on the Decisions in the English Courts. Fifth Edition. By H. H. L. BELLOT, LL.D., Barrister-at-Law. 661 pages. Price £1 15s. net. 1925

**BELLOT'S Analysis of Foote's Private International Law.** With leading cases. 64 pages. Price 3s. 6d. net. 1925

**DICEY'S Digest of the Law of England with reference to the Conflict of Laws.** Fifth Edition. 1003 pages. Price £2 15s. net. 1932
"Dicey" is the prescribed book for the Solicitors' Final Examination.

**BURGIN & FLETCHER'S Students' Conflict of Laws.** An Introduction to the Study of Private International Law, based on Dicey. 291 pages. Price £1 net. 1928

**HIBBERT'S Leading Cases on Conflict of Laws.** By W. N. HIBBERT, LL.D., Barrister-at-Law. 293 pages. Price £1 1s. net. 1931
Compiled on the same lines as Cockle's Cases on Evidence. It contains 200 cases and is an indispensable companion to all the text books on the subject.

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**CHALMERS & ASQUITH'S Outlines of Constitutional Law.** By D. CHALMERS and CYRIL ASQUITH, Barristers-at-Law. Fourth Edition. 470 pages. Price 15s. net. 1930

This work includes a survey of Central and Local Administrative Law and of Colonial Constitutions.

"If we are asked 'Is this a good cram book?' we must answer 'Yes.' It is the book used by most pass students and satisfies their one desire—to be enabled to pass the examination."—*Annual Survey of English Law, 1930.*

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**THOMAS & BELLOT'S Leading Cases in Constitutional Law.** With Introduction and Notes. Sixth Edition. By H. H. L. BELLOT, LL.D. Formerly Acting Professor of Constitutional Law in the University of London. 352 pages. Price 10s. 6d. net. 1927

Some knowledge of the chief cases in constitutional law is now required in many examinations, and is obviously necessary to the thorough student of constitutional history. This book extracts the essence of the cases with which the student is expected to be familiar, preserving always something of the concrete circumstance that is so helpful to the memory. It adds, where necessary, a short note to the individual case, and subjoins to each important group of cases some general remarks in the shape of a note. The cases are so arranged as to be convenient for ready reference.

**TASWELL-LANGMEAD'S English Constitutional History.** From the Teutonic Invasion to the Present Time. Designed as a Text-book for Students and others. Ninth Edition. By A. L. POOLE, M.A., F.S.A., Fellow and Tutor, St. John's College, Oxford. 758 pages. Price 21s. net. 1929

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**WILSHERE'S Analysis of Taswell-Langmead's Constitutional History.** By A. M. WILSHERE, LL.B., Barrister-at-Law. 133 pages. Price 6s. 6d. net. 1929

**HAMMOND'S Short English Constitutional History** for Law Students. By EDGAR HAMMOND, B.A. 130 pages. Price 7s. 6d. net. 1926

**GARSIA'S Constitutional Law and Legal History in a Nutshell.** Including an Alphabetical Table of Writs and their Uses, a Comparative Table of the Constitutions of the Dominions. . Third Edition. By M. GARSIA, Barrister-at-Law. 138 pages. Price 4s. net. 1932

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## CONTRACTS.

(See also Common Law.)

**The Articled Clerk's Cram Book.** See page 19.

**WILSHERE'S Outline of Contracts and Torts.** By A. M. WILSHERE and DOUGLAS ROBB, Barristers-at-Law. Third Edition. 155 pages. Price 7s. 6d. net. 1928

It is designed as an assistance to the memory of the Student who has read Odgers or Indermaur on the Common Law.

**CARTER on Contracts.** Elements of the Law of Contracts. By A. T. CARTER, of the Inner Temple, Barrister-at-Law, Reader to the Council of Legal Education. Seventh Edition. 272 pages. Price 12s. 6d. net. 1931

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**SALMOND & WINFIELD on Contracts.** Principles of the Law of Contract. By the late Sir JOHN W. SALMOND and P. H. WINFIELD, Barrister-at-Law. 544 pages. Price 30s. net. 1927

"Exceedingly clear and accurate in its statement of the principles of the law of contract."—*Law Notes.*

**CONYERS' Contracts in a Nutshell.** With Epitomes of Leading Cases. By A. J. CONYERS, Barrister-at-Law. 119 pages. Price 4s. net. 1930

**SUSMAN'S Questions and Answers on Contracts.** By B. SUSMAN, Barrister-at-Law. 134 pages. Price 6s. net. 1930

## CONVEYANCING.

**The Articled Clerk's Cram Book.** See page 19.

**ELPHINSTONE'S Introduction to Conveyancing.** By Sir HOWARD WARBURTON ELPHINSTONE, Bart. Eighth Edition, by HARRY FARRAR, Barrister-at-Law, Editor of Key and Elphinstone's Precedents in Conveyancing. [*In the press.*

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This book is complementary to and extends the information in the books on Real Property. The reader is taken through the component parts of Purchase Deeds, Leases, Mortgage Deeds, Settlements and Wills, and the way in which these instruments are prepared is explained. Previous to this is a short history of Conveyancing, and chapters on Contracts for Sale of Land dealing with the statutory requisites, the form, particulars and conditions of sale, the abstract of title, requisitions, etc., and finally there is a chapter on conveyance by registration. The second

part of the book contains STUDENTS' PRECEDENTS IN CONVEYANCING, illustrating the various documents referred to in the first part. It is the only book containing a representative collection of precedents for students.

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## CRIMINAL LAW AND PROCEDURE.

**The Articled Clerk's Cram Book.** See page 19.

**ODGERS on the Common Law.** See page 6.

**GARSIA'S Criminal Law and Procedure in a Nutshell.** Fourth Edition. By M. GARSIA, Barrister-at-Law. 110 pages. Price 4s. net. 1929

Enumerates and classifies the more important crimes, gives a short history of the Criminal Courts and a brief outline of criminal procedure.

**HARRIS & WILSHERE'S Principles and Practice of the Criminal Law.** Intended as a Lucid Exposition of the subject for the use of Students. Fifteenth Edition. By A. M. WILSHERE, Barrister-at-Law. 648 pages. Price 15s. net. 1933

"This Standard Text-book of the Criminal Law is as good a book on the subject as the ordinary student will find on the library shelves . . . . The book is very clearly and simply written. No previous legal knowledge is taken for granted, and everything is explained in such a manner that no student ought to have much difficulty in obtaining a grasp of the subject. . . ." —*Solicitors' Journal.*

". . . . As a Student's Text-book we have always felt that this work would be hard to beat, and at the present time we have no reason for altering our opinion. . . .. ."—*Law Times.*

**WILSHERE'S Elements of Criminal and Magisterial Law and Procedure.** By A. M. WILSHERE, Barrister-at-Law. Third Edition. 301 pages. Price 12s. 6d. net. 1922

**WILSHERE'S Leading Cases illustrating the Criminal Law,** for Students. Second Edition. 398 pages. Price 15s. net. 1924

"This book is a collection of cases pure and simple, without a commentary. In each case a short rubric is given, and then follow the material parts of the judge's opinions. The selection of cases has been judiciously made, and it embraces the whole field of criminal law. The student who has mastered this and its companion volume will be able to face his examiners in criminal law without trepidation."—*Scots Law Times.*

**FARRIN'S Criminal Law for Examinees.** Recent Examination Questions, with Answers by R. W. FARRIN, Barrister-at-Law. 128 pages. Price 6s. net. 1930

## DICTIONARY.

**The Concise Law Dictionary.** By P. G. OSBORN, Barrister-at-Law. 333 pages. Price 15s. net. 1927

A book every student should have for general reference. It deals with existing law and with legal history. Legal maxims are translated, and there are glossaries of Latin, French and Early English words relating to the law. There is also a list of abbreviations used in citing law reports. A very useful feature is a digest of some four hundred leading cases

## EQUITY.

**The Articled Clerk's Cram Book.** See page 19.

**POTTER'S Introduction to the History of Equity and its Courts.** By HAROLD POTTER, LL.D., Ph.D. 105 pages. Price 8s. 6d. net. 1931

**SNELL'S Principles of Equity.** Intended for the use of Students and Practitioners. Twentieth Edition.

By H. G. RIVINGTON, M.A. Oxon., and A. C. FOUNTAINE. 595 pages. Price £1 10s. net. 1929

(—— Adapted for Indian Students. By S. C. BAGCHI. Price £1 1s. net. 1930)

"In a most modest preface the editors disclaim any intention to interfere with Snell as generations of students have known it. Actually what they have succeeded in doing is to make the book at least three times as valuable as it ever was before. Illustrations from cases have been deftly introduced, and the whole rendered simple and intelligible until it is hardly recognisable."—*The Students' Companion.*

**BLYTH'S Analysis of Snell's Principles of Equity,** with Notes thereon. By E. E. BLYTH, LL.D., Solicitor. Fourteenth Edition. 275 pages. Price 10s. 6d. net. 1929

"This is an admirable analysis of a good treatise; read with Snell, this little book will be found very profitable to the student." —*Law Journal.*

**GARSIA'S Equity in a Nutshell.** By M. GARSIA, Barrister-at-Law. 76 pages. Price 3s. 6d. net. 1928

**FARRIN'S Equity for Examinees.** Questions set at recent examinations, with Answers by R. W. FARRIN, Barrister-at-Law. 128 pages. Price 6s. net. 1930

**STORY'S Commentaries on Equity Jurisprudence.** Third English Edition. By A. E. RANDALL. 641 pages. Price £1 17s. 6d. net. 1920

**WILSHERE'S Principles of Equity.** Second Edition. By L. B. TILLARD, Barrister-at-Law. 590 pages. Price £1 2s. 6d. net. 1929

In this book the author has endeavoured to *explain* and enable the student to *understand* Equity. He has incorporated a large number of explanations from the authorities and has tried to make the subject intelligible while at the same time he has as much useful and relevant detail as the larger students' works. It is not a mere "cram" book.

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**WHITE & TUDOR'S Leading Cases in Equity.** A Selection of Leading Cases in Equity; with Notes. Ninth Edition. By E. P. HEWITT, K.C. 2 vols. Price £4 10s. net. 1928

## EVIDENCE.

**All You Want for the Bar Final.** See page 19.

**COCKLE'S Leading Cases and Statutes on the Law of Evidence,** with Notes, explanatory and connective, presenting a systematic view of the whole subject. By ERNEST COCKLE, Barrister-at-Law. Fifth Edition. By C. M. CAHN. Cases, 415 pages. Statutes, 115 pages. Price 18s. 6d. net. 1932

This book and Phipson's Manual are together ***sufficient*** for all ordinary examination purposes, and will save students the necessity of reading larger works on this subject.

By an ingenious use of black type the author brings out the essential words of the judgments and Statutes, and enables the student to see at a glance the effect of each section.

"Of all the collections of leading cases compiled for the use of students with which we are acquainted, this book of Mr. Cockle's is, in our opinion, far and away the best. The student who picks up the principles of the English law of evidence from these readable and logical pages has an enormous advantage over a generation of predecessors who toiled through the compressed sentences of Stephen's little digest in a painful effort to grasp its meaning. Mr. Cockle teaches his subject in the only way in which a branch of law so highly abstract can ever be grasped; he arranges the principal rules of evidence in logical order, but he puts forward each in the shape of a leading case which illustrates it. Just enough of the headnote, the facts, and the judgments are selected and set out to explain the point fully without boring the reader; ***and the notes*** appended to the cases ***contain all the additional information that anyone can require in ordinary practice.***"—*Solicitors' Journal.*

**PHIPSON'S Manual of the Law of Evidence.** Fourth Edition. 282 pages. Price 12s. 6d. net. 1928

This is an abridgment for students of Mr. Phipson's larger treatise. With Cockle's Cases it will be sufficient for examination purposes.

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which gives a scientific and accurate presentment of the subject in a form and compass suitable to students."—*Australian Law Times.*

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**BEST'S Principles of Evidence.** With Elementary Rules for conducting the Examination and Cross-Examination of Witnesses. Twelfth Edition. By S. L. PHIPSON, Barrister-at-Law. 673 pages. Price £1 12s. 6d. net. 1923

"The most valuable work on the law of evidence which exists in any country."—*Law Times.*

**GARSIA'S Evidence in a Nutshell.** By MARSTON GARSIA, Barrister-at-Law. 30 pages. Price 2s. 6d. net. 1929

***FARRIN'S Questions and Answers on Evidence.*** By R. W. FARRIN. 67 pages. Price 3s. 6d. net. 1931

**WROTTESLEY on the Examination of Witnesses in Court.** Including Examination in Chief, Cross-Examination, and Re-Examination. With chapters on Preliminary Steps and some Elementary Rules of Evidence. Second Edition. By F. J. WROTTESLEY, of the Inner Temple, Barrister-at-Law. 173 pages. Price 6s. net. 1929

This is a practical book for the law student. It is interesting, and is packed full of valuable hints and information.

## EXAMINATION GUIDES AND QUESTIONS.

**The Concise Law Dictionary** (*ante*, p. 15) is an indispensable book of reference.

**GARSIA'S Digest of Questions set at Bar Examinations during the past six years.** 121 pages. Price 6s. net. 1932

The questions are grouped logically under subjects, and references are given to text books where the answers will be found.

**BROOKS'S All You Want for the Bar Final.** A Condensed Cram Book, dealing with Torts, Contracts, Equity, Civil Procedure, Evidence, Pleading. By GRAHAM BROOKS. Second edition. 137 pages. Price 5s. 6d. net. 1929

The author claims that a full knowledge of the contents of this book is by itself sufficient for the purpose of answering all questions normally asked.

**The Articled Clerk's Cram Book.** By W. S. CHANEY, Solicitor, *(John Mackrell Prizeman).* 794 pages. Price 17s. 6d. net. 1932

A collection of Notes on the various subjects which come within the purview of the Solicitor's Final and Honours Examinations. While it is thought that a knowledge of its contents would in some cases probably suffice to enable a Student to answer sufficient questions to secure a pass, it is only intended as Notes on the general principles of the various subjects covered, and spaces have been left to enable the Student to add to these Notes as occasion offers.

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**STEELE'S Articled Clerk's Guide to the Final and Honours Examinations.** Containing a Complete Course of Study, with Books to Read, Test Questions, Regulations, &c. Third Edition. By E. A. STEELE and J. M. MCLUSKY, Solicitors, Principals of the Halifax Law Classes. 96 pages. Price 5s. net. 1932

**The Study of English Law—The Examinations—Keeping Fit—Practical Work—Debating—Lectures—Coaching—Planning the Campaign:—(1) The Preliminary Stages, (2) The Last Phase.**

Even if you are being coached, you will find many useful hints and much sound advice in it.

**A New Guide to the Bar.** Containing the Regulations and Examination Papers. Sixth Edition. By M. GARSIA, Barrister-at-Law. 130 pages. Price 5s. net. 1928

**A Guide to the Legal Profession and London LL.B.** Containing the latest Regulations for the Bar and articled clerks. With a detailed description of all current Students' Law Books, and suggested courses of reading. 112 pages. Price 3s. 6d. net. 1933

## EXECUTORS.

**WALKER'S Compendium of the Law relating to Executors and Administrators.** Sixth Edition, embodying the effect of the Acts of 1925. By S. E. WILLIAMS, of Lincoln's Inn, Barrister-at-Law. 386 pages. Price £1 5s. net. 1926

"We highly approve of Mr. Walker's arrangement. . . . We can commend it as bearing on its face evidence of skilful and careful labour."—*Law Times.*

**GARSIA'S Administration of Assets in a Nutshell.** 39 pages. 3s. 6d. net. 1927

Excellent for final revision.

## HINDU LAW.

**DURAI'S Hindu Law in a Nutshell.** By J. CHINNA DURAI, Barrister-at-Law, Advocate, Madras. 124 pages. Price 5s. net. 1933

## INCOME TAX.

**NEWPORT & STAPLES on Income Tax Law and Practice.** By C. A. NEWPORT, F.C.R.A., Corporate Accountant, and R. STAPLES, F.S.S. Sixth Edition, 319 pages. Price 10s. 6d. net. 1932

Written specially for examination students. It is illustrated throughout by examples, and has an appendix of questions and answers.

"This book in a way breaks new ground . . . The volume

before us purposely assumes no prior knowledge, endeavours to make the position clear by simple practical illustrations, and in the words of its author, 'so far as possible, anything approaching the jargon almost inseparable from the subject has been either avoided or accompanied by intelligible explanations.'"—*Law Notes.*

## INSURANCE LAW.

**PORTER'S Laws of Insurance: Fire, Life, Accident and Guarantee.** Embodying Cases in the English, Scotch, Irish, American, Australian, New Zealand, and Canadian Courts. Seventh Edition. 505 pages. Price £1 12s. 6d. net. 1925

## INTERNATIONAL LAW.

(See also Conflict of Laws.)

**BENTWICH'S Students' Leading Cases and Statutes on International Law,** arranged and edited with notes. By NORMAN BENTWICH, Barrister-at-Law. With an Introductory Note by Professor L. OPPENHEIM. 247 pages. Price 12s. 6d. net. 1913

"This Case Book is admirable from every point of view, and may be specially recommended to be used by young students in conjunction with their lectures and their reading of text-books." —*Professor Oppenheim.*

**COBBETT'S Cases and Opinions on International Law,** and various points of English Law connected therewith, Collected and Digested from English and Foreign Reports, Official Documents, and other sources. With Notes containing the views of the Text-writers on the Topics referred to, Supplementary Cases, Treaties, and Statutes. Vol. I. "Peace." Fifth Edition. By F. TEMPLE GREY, Barrister-at-Law. 365 pages. Price 16s. net. 1931
Vol. II. "War and Neutrality." Fourth Edition. By H. H. L. BELLOT, D.C.L. 671 pages. Price £1 5s. net. 1924

"The book is well arranged, the materials well selected, and the comments to the point. Much will be found in small space in this book."—*Law Journal.*

**JACKSON'S Primer of International Law.** By S. JACKSON. 163 pages. Price 5s. net. 1933

## JURISPRUDENCE.

**SALMOND'S Jurisprudence; or, Theory of the Law.** By JOHN W. SALMOND, Barrister-at-Law. Eighth Edition. By C. A. W. MANNING, Barrister-at-Law. 559 pages. Price £1 net. 1930

"Almost universally read among students of jurisprudence."—*Law Coach.*

**HIBBERT'S Jurisprudence.** By W. N. HIBBERT, LL.D., Barrister-at-Law. 319 pages. Price 12s. 6d. net. 1932

A critical examination of the varying views of writers on this subject and a statement of the Author's own views which are the result of thirty-three years' teaching. Where necessary the historical aspect has been dealt with.

It is a book of the greatest assistance to examination students.

"It goes almost without saying that Dr. Hibbert's exposition is lucid; in fact it is difficult to think of any recent work on the same subject which 'puts over an author's ideas with such clarity and which must have succeeded in leaving a student with so little doubt of what the teacher was trying to say."—*Journal of the Society of Comparative Legislation.*

## LEADING CASES.

(See also under Subjects.)

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